REPORT

ON

WORKMEN'S COMPENSATION

FOR INJURIES

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UNIVERSITY OF TORONTO,
21st March, 1900.

The Hon. G. W. Ross,
Premier of Ontario.

SIR,—I beg to submit herewith, Report upon Workmen's Compensation, which the Provincial Government did me the honor to ask me to prepare.

I have to acknowledge the kindness of the following gentlemen whose assistance was indispensable in procuring the necessary information.

Herr Pfarrius and Dr. Zacher of the Imperial Insurance Department, Berlin; Herr Kaan of the Imperial Insurance Department, Vienna; Herr Forrer, Winterthur; His Excellency, Sir Charles Scott, H.B.M. Ambassador at St. Petersburg; Lord Gough and the Hon. Richard Acton of H.B.M. Embassy at Berlin, and Prof. H. Angst, H.B.M. Consul-General, Zurich. I have also to thank the officials of the Home Office, the Insurance Companies and the Trades Unions who rendered me much effective assistance.

I am indebted to Mr. D. R. Keys, M.A., University College, Toronto, for help in translation.

Yours respectfully,

JAMES MAVOR.

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WORKMEN'S COMPENSATION

FOR INJURIES

(1) Relation between the Employers' Liability Act, 1880, and the Workmen's Compensation Act, 1897, Great Britain.

Under the Common Law of England an employer of labour was liable for accidents occurring through his own negligence or that of his servants when such accidents inflicted injury upon third parties;(1) but was held not to be liable for accidents occurring to his own servants through the negligence of their fellow-servants.

PAGE.

5 This doctrine that "common employment" was a good defence appears to have been recognized first in 1837.(2) It was not until 1868 that it was extended to Scotland.(3) The doctrine has also developed in American law. It does not appear in legal practice in France nor in Germany.(4)

9 So long as the doctrine was held in its rigour, the liability of the employer at Common Law was almost insusceptible of proof, because the defence of "common employment" was almost always sufficient to nonsuit the plaintiff. The workman was thus in a less favorable position as regards accidental injury incurred in the course of his employment than any third party. The first attempts on the part of organized labour to make employers liable for accidents appear to have been made in 1858 by Alexander Macdonald, the well-known coal miners' representative.(5) At that time there were no adequate statutory regulations for the working of mines, the Mines and Collieries Act of 1842 having been found to be inadequate. A series of colliery disasters in the early sixties brought home to everyone the need for attempting by means of legislation to diminish the number of such accidents, and among the legislative expedients suggested by Macdonald was to make employers pecuniarily liable in case of accident occurring through their own negligence. This was the beginning of the trade union agitation for employers' liability.

13 16 21 22 24 26 27 29 35 In all of the Trades Union Congresses after 1872 the question of employers' liability assumed a prominent place, and the following resolution was passed year after year:—"That this Congress expresses its determination to do "all in its power to get a measure passed through Parliament during the coming "session by which employers shall be made liable to pay compensation to their "workmen for loss sustained by such workmen caused by accident occurring in "the discharge of their duties through the negligence of those for whom the em- "ployers ought to be responsible, and that when such accidents are fatal, the "employer shall compensate the families of the workmen killed."(6) Those who

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(1) Although a master was liable at common law for injury done through his own negligence to his servant, no attempt seems to have been made to make this apply until about seventy years ago. Cf. Beatrice & Sydney Webb, "Industrial Democracy," London 1897, vol. 1., p. 33.

(2) See Priestley v. Fowler, 3 Meeson & Welsby, 1. R. Minton-Senhouse and G. F. Emery, "Accidents to Workmen . . . . . ," London, 1898, p. 2. Also Beatrice & Sydney Webb, "The History of Trade Unionism," London 1894, p. 350.

(3) Webb, id.

(4) Cf. Sir Frederick Pollock, Memorandum in Report of Royal Commission on Labour, C. 7063, iii A, 1894, p. 346 to 348; and Beatrice & Sydney Webb, "Industrial Democracy," vol. 1, p. 366.

(5) Webb, "Industrial Democracy," vol. I, p. 367-368.

(6) Seventh and Eighth Annual Reports, Trades Union Congress, 1875, etc.

moved the resolution in the Trades Union Congress, consistently declared that compensation could not be demanded excepting when negligence had been proved, the trade societies being regarded as able out of their benefit funds to meet losses sustained by accidents from other causes. Between 1872 and 1879 eight Employers' Liability Bills were introduced into the House of Commons. (1) The ground upon which all of these Bills were urged was that the workman, owing to the doctrine of "common employment" was placed in a more disadvantageous position as regards his employer than was an outsider. The notion that in dangerous employments relatively high wages represented a payment for the extra risk was implicitly rejected by the trade unions.(2)

The principal object aimed at was the prevention of accidents. The trade unions entertained the view that employers could be touched only through their pockets and that the sole means of preventing accidents was to make them expensive. These views ultimately prevailed; and in 1880 the Employers' Liability Act (43 and 44 Vic., Chap. 42) was passed.

The Act of 1880 was an experiment. It modified the doctrine of common employment(3); but it retained the principle of liability being attached to negligence if a workman is injured by (*a*) a defect in the machinery, which was caused or remained undiscovered through the negligence of the employer or his agents; or (*b*) by the negligence of the superintendent of the work; or (*c*) by the negligence of the person to whose orders the workmen had to conform; or (*d*) by an act or omission of any person done under any improper by-law of the employer; or (*e*) by the negligence of the person having control over any signals, etc., as in the case of a railway. Negligence must be proved. Notice must be given within six weeks by the servant.(4)

The Act of 1880 had not been long in operation before it was seen that the objects aimed at had only partially been achieved. The imposition of pecuniary liability was not shewn conclusively to result in the diminution of the number of accidents, and it was also found that employers, by means of establishing benefit funds for their workmen, contrived to escape liability by "contracting out." This practice of "contracting out" completely neutralized, from the trade union point of view, the advantages of the Act, the primary object being not to secure compensation but to prevent accidents, and in order to do so to punish negligent employers. From the trade union point of view, "contracting out" was thus a pernicious principle, and "Macdonald's idea of protecting the workmen's life by making accidents costly was in fact thereby entirely defeated." (5)

Again resolutions began to appear in the Trades Union Congresses. At the Congress of 1881, a few months after the Act came into operation, a resolution was passed declaring that "the working class was deprived of the advantages accruing from the Employers' Liability Act, by reason of its permissive nature, which enables employers to contract themselves out of the Act." (2)

This, or a similar resolution, appeared for twelve years at successive Trades Union Congresses.

The evidence before the Labour Commission (1) on the experience of the working of the Act of 1880 showed that it had not been effective in securing the objects which were aimed at. The legal expenses were great and the cases were

(1) Webb, "Industrial Democracy," vol. 1, p. 370. (2) Cf. infra p. 44.

(2) For a good account of the Act of 1880, see for example R. M. Minton-Senhouse and .G F. Emery, op. cit., also A. Pearce Higgins "Employers' Liability . . . ," Edinburgh, 1898.

(3) Webb "Industrial Democracy," vol. 1, p. 372.

(4) 14th Annual Report Trades Union Congress, London 1881, Manchester 1881. p. 15.

(5) See the Report of the Royal Commission on Labour. App. clviii. and clix. 1894. c. 7063 III. A., pp. 346-348 and 363-384; also Report of Commission sitting as a whole. Queries 7178-7187. The whole subject had been previously referred to several Select Committees of the House of Commons. See Bibliography *infra*.

fought out bitterly by the Insurance companies who defended the actions. (1)

In 1893 Mr. Gladstone's government capitulated to the trade union demands, and a bill was brought in by Mr. Asquith, (2) which modified the permission to "contract out" so far as to prevent any "contracting out" unless it were agreed to by two-thirds of the workmen, and unless the method of compensation provided were approved of by the Board of Trade. The workmen were to be permitted to vote by secret ballot in a prescribed way. This measure was amended to so great an extent in the House of Lords that it was not proceeded with. After this defeat the subject came up periodically at the Trades Union Congresses, and was otherwise discussed from various points of view by labour representatives and others. Meanwhile legislation for the regulation of mines, chemical works and factories of various kinds, as well as legislation intended to prevent accidents upon railways, together with an increased number of inspectors and an increased efficiency of inspection due largely to the employment of practical men and women as inspectors, had to a large extent achieved what employers' liability pure and simple seemed powerless to accomplish, namely, the diminution of the number of accidents (3) in proportion to the number of persons employed.

The diminution of accidents in proportion to the number of persons employed during the past twenty-five years is so impressive as to leave no doubt as to the practical benefits of the Factory Acts.

It may therefore be the case that the abolition of "contracting out" which was insisted upon by the Trade Unions so strenuously is not a matter of so much importance as it appeared to them to be. "Contracting out" is indeed simply a form of insurance; and to prevent employers from insuring might well be regarded as unnecessarily oppressive. Still the rationale of the Trade Union position is that accidents ought to be made expensive to the employer in order to compel him to take means to prevent their occurrence. It does not appear, however, that those industries in which "contracting out" has prevailed are more subject to accidents than others where the practice does not prevail. (4) The Trade Union position has been directed rather towards the fixation of employers' liability and the prevention of accidents by that means than towards compensation for injuries resulting from accidents however they might be caused. Indeed the Trade Unions sought through their benefit funds to meet the requirement of compensation without legislation, and a perusal of the statistics of the Trade Unions during the past twenty years will show that considerable sums have been paid by them on this account.(5)

Mr. Joseph Chamberlain had for some time caused his name to be identified with a pension scheme somewhat similar to the invalidity and old age insurance law of Germany, and finding the difficulties of establishing such a scheme in England to be at the time too great, it was natural that in his desire to implement his promises in connection with labour legislation he should attempt a drastic change in the law of liability for accidents. The outcome of this was

(1) Mr. Chamberlain, who had defended the measure of 1880 on its introduction, spoke of it in 1892 as "a half-hearted compromise." Nineteenth Century, vol. xxxii., p. 694. The deficiences of the Act of 1880 are well set forth by Mr. H. W. Wolff, "Employer's Liability, What ought it to be?" London, 1897.

(2) Employers' Liability. A Bill, etc. [H. of C.] 288 of 1893.

(3) Accidents occur not merely through the negligence of employers which may be punished; but frequently through ignorance which it is difficult to punish. For example, in places where machinery is used to an extent insufficient to justify the employment of an engineer, shafts and other machinery are frequently, through mere ignorance of mechanics, run at a speed which involves inevitable destruction of the machinery with great risk to life and limb. For cases of this sort see J. Calder, [Factory Inspector] "The Prevention of Factory Accidents," London, 1899, p. 76.

(4) Compare Webb "Industrial Democracy," Vol. 1, p. 375.

(5) See the successive Annual Reports of the Labour Correspondent of the Board of Trade.

the Workmen's Compensation Act of 1897.[1] The provisions of the Act are undoubtedly up to a certain point copied from the German system. The Act falls short of the German system in respect to the absence of compulsory insurance and in respect to the retention of the ordinary legal proceedings for the enforcement of claims excepting in so far as these claims may be enforced through the Arbitration Courts established by the Act. The German system, as will be seen from the description of it below, relieves the injured workman from the necessity of meeting his employer face to face in legal proceedings for the recovery of compensation. It has the effect rather of placing him in the position of a claimant upon a fund to which he himself has contributed and over which he himself exercises a certain elective control; while the managers of the fund are entitled to recover from the employer the amount of compensation which has been granted. The English system under the new Act leaves the injured workman still face to face with his employer as before, with the exception that the workman may in the first instance bring his claim before a board of arbitration instead of before a court of law. In the German system a personal settlement of the employer with the labourer is not recognized; in the English system such a settlement would stop proceedings.

The new Act does not repeal the Employers' Liability Act of 1880, nor does it prevent action being taken, if so advised, under Common Law.

While it does not provide for compensation in all cases of accidental injury, it increases greatly the number of cases in which the employer is rendered liable for such injury. The principal changes in the law have been in the shifting of the onus of proof from the shoulders of the injured workman to those of the employer, and in rendering unnecessary proof of negligence on the part of the employer. In this respect it goes even further than the demands of the Trade Unions.

The new Act also substitutes the phrase "wilful and serious misconduct" for the less definite "contributory negligence" of the Act of 1880. It practically insures the workman, provided the employer or his assurer does not become bankrupt and compels the employer to pay the premium[2]. Moreover a new principle is introduced into the law of damage. The death of an employer no longer prevents as it did, action being taken against his estate for injury to an employee.

The Workmen's Compensation Act in Parliament.

The following dates indicate the progress of the Workmen's Compensation Bill of 1897.

1897. *Commons.*

May 3. Bill read a first time. Sir Matthew White Ridley.
May 17. Bill debated.
" 18. Ditto read a second time. Speeches by Mr. Chamberlain, Mr. Asquith and Sir Richard Webster.
" 25. Bill in Committee.
" 31. Fresh clause added.
June 1-4. Bill in Committee.
July 6. Report stage.
" 13. Report stage completed.
" 15. Bill read a third time without a division.
Lords.

(1) Mr. Chamberlain had indicated his intention to deal with the question of Compensation for Accidents in his article on "The Labour Question," *Nineteenth Century*. (1892) Vol. xxxii., page 677.

(2) Minton-Senhouse and Emery *op. cit.* p. 92.

July 20. Workmen's Compensation Bill read a second time after debate in which Lords Balfour, Wemyss, Londonderry, Dunraven, Kimberley and Salisbury took part.
" 26. After sitting of several hours Bill passed through Committee.
" 29. Bill read a third time by 69 to 6.
" 31. Commons' reasons for disagreeing with the Lords' amendments received.
Aug. 3. Lords agreed to Commons' amendments to Lords' amendments.
1898.
July 1. Act became operative.

(2) Synopsis of the Workmen's Compensation Act 1897.

The principal changes in the law which have been brought into effect by the Act of 1897 are these :—(1)

(1) Instead of the indefinite compensation recoverable at Common Law or under the Employers' Liability Act, compensation is payable upon a definite principle. The maximum and minimum amounts payable on acccount of death and the maximum proportion of weekly wages payable on account of accidents which only cause injury are fixed. (2)

(2) The doctrine of "common employment" is abolished in certain trades, and in this way the liability of employers is increased on account of their now being liable for injury done by accidents for which they were formerly not liable.

(3) "Contracting out" of the Act is not permitted excepting in certain specified cases.

(4) Should a master die before the injured workman has obtained compensation, the workman may proceed against the administrators of his estate.

Trades included under the Act of 1897.

The Act of 1897 includes all employees employed in certain places, whether these employees be men, women or children, or whether they be employed at manual or other labour. The places to which the Act applies are as follows :

(1) A Railway.
(2) A Factory.
(3) A Mine.
(4) A Quarry.
(5) Engineering work.
(6) Certain buildings.

(1) Includes all railways ; but does not include tramways (Street Railways).
(2) Includes only the following places :—

Print works, bleaching and dyeing works, earthenware or china works, lucifer match works, percussion cap works, cartridge works, paper staining works, fustian cutting works, blast furnaces, foundries, copper mills, iron mills, metal and india-rubber works, paper mills, glass works, tobacco factories, printing works, book-binding works, flax scutch works.

Also hat works, rope works, bakehouses, lace warehouses, shipbuilding yards, and pit banks, if steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

(1) In preparing this abstract, use has been made of the summary given by A. Pearce Higgins in "Employers' Liability and Compensation to Workmen on the Continent." Edinburgh 1898, p. 110 *et seq.*, of Fabian Tract No. 82. "The Workmen's Compensation Act what it means and how to make use of it." London 1899, and of the Act itself.

(2) Although the ambiguity of the expression "average weekly earnings" has led to uncertainty and litigation *Cf. infra p.* 19.

Any premises wherein steam, water or other mechanical power is used in aid of the manufacturing process carried on there, for the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article.

Any premises wherein steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoanut fibre, or other like material, or any fabric made thereof.

Every laundry worked by steam, water or other mechanical power.

Every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process. [The accident, however, need not arise from the use of the machinery. But unless machinery is used, the Act does not apply. Thus, when a man was employed in unloading cases of cartridges from a ship by means of a crane, and an explosion occurred while he was putting a case into the basket of the crane, the Court of Appeal said his relatives were entitled to compensation, because he was working at a place to which the Act applied, although the accident was not caused by the machinery.]

(3) Includes all mines used for working minerals, that is to say, all mines to which the Coal Mines Regulation Act, 1887 (50 and 51 Vict. Ch. 58), or the Metaliferous Mines Regulation Act 1872 (35 and 36 Vict. Ch. 77) apply.

(4) A quarry includes any place not a mine in which persons work in getting minerals, provided it is more than twenty feet deep.

(5) Engineering work is defined to mean any work of construction or alteration or repair of a railway, harbour, dock, canal or sewer, and includes any other work for the construction, alteration or repair for which machinery is driven by steam, water or other mechanical power.

(6) As regards buildings, the Act applies only to three classes :—Any building over thirty feet high, which is either (a) being constructed or repaired by means of a scaffolding; or (b) being demolished, even when scaffolding is not used. The building must be at least actually thirty feet high at the time of the accident, the height being measured from the original level of the ground to the top of the roof. A plank tied to a ladder and resting on a window sill has been held not to be scaffolding.

(2) Any building on which machinery driven by steam, water or other mechanical power is being used for the purpose of construction, repair or demolition of that building; and

(3) Any premises on which machinery worked by steam, water or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with the building.

Trades Which Do Not Come Under the Act.

(1) Agricultural labourers.
(2) Seamen and fishermen.
(3) Domestic servants.
(4) Working operatives.
(5) Shop assistants.
(6) Persons engaged in transport service and in tending horses.
(7) Sailors in the navy and soldiers in the army.

Kinds of Accidents Included.

If a workman meets with an accident whilst at work, his employer must pay compensation if the workman is prevented from earning full wages for more than the next two weeks. The accident must happen on or near to the employer's place of business. The employer is liable even although the accident may be

caused by the negligence of a fellow servant, and even although the workman himself was partly to blame. If, however, an accident occurs entirely from the fault of the workman, compensation is not payable to him for any injury he may have suffered, although it is payable to any of his fellow servants who may have suffered with him and in consequence of his conduct. Compensation is only to be paid for an accident which happens when the workman is doing his proper work.

"Contracting Out."

Under the Employers' Liability Act of 1880 a workman might be practically obliged by his employer to contract out of the Act and to pay into an insurance fund a certain proportion of his wages, the employer also contributing, all accidents being compensated for out of this fund. This practice is abolished, with the important exception, that an employer may formulate a scheme by which provision may be made for compensation for accidents. Before this scheme can be established however he must submit it to the Chief Registrar of Friendly Societies. The registrar, after consulting the workmen as well as the employer, may grant a certificate. This certificate lasts for five years, and if the workmen are dissatisfied with the results of its operation and think that they would be better not to bind themselves against taking action under the Act, the certificate may be cancelled if the registrar thinks the complaints are justified. But an employer has no right to force any labourer to join in a scheme of this kind, nor can he make it a condition of employment.

Notice of Accident.

As the preliminary to a claim for compensation notice of accident must be given to the employer. If the workman is killed the notice must be given by his family. The notice must be in writing and it must give the name and address of the injured, the date of the accident and the cause of the injury. No special form is prescribed, but the information indicated must be given accurately. No time limit for the notice is set, but it must be given as soon as possible after the accident and in the case of mere injury before the workman voluntarily severs his connection with the employer. Claims for compensation must be given in within six months of the accident whether the accident results in death or not. Unless these rules are observed no compensation can be obtained.

Compensation.

Notice having been given as described, the next point is as to whether action for compensation should be taken, if necessary, under the Employers' Liability Act, under the Common Law or under the new Act of 1897. If the claim is disputed, it may in the first instance be referred to any committee to which the workman and his employer have mutually agreed to refer cases of claims for compensation for accident. If the committee does not settle the dispute within three months from the date of the claim being first brought before them; or if the committee decides to refer the question to a single person selected by them; or if either the employer or the injured workman or his representatives object in writing to the settlement of the question by the committee, then the dispute is referred to arbitration. If the employer and the workman cannot agree upon an arbitrator, the matter may be brought before the County Court Judge,(1) or he may appoint an arbitrator to deal with the case. When the arbitrator is appointed,

(1) The County Court Judge is held to act as arbitrator in cases under the Compensation Act. See case Mountain v. Parr (1899) 15 Times Law Reports, 262; No. 83 *infra*, reported "Workmen's Compensation Cases," Minton Senhouse, p. 110.

either by the parties themselves or by the judge, he may submit to the judge any questions of law which arise. On questions of fact no appeal can be made; but an appeal lies from the judge's decision on questions of law to the Court of Appeal direct, excepting where the employer and workman have agreed beforehand to accept the decision of the County Court Judge. The judge or the arbitrator can order either party to pay the costs, which are fixed by the rules of the County Court. In disputes under the Act, provided the judge or the arbitrator gives leave, the workman may be represented by a member of his family or by an officer of his Trade Union. A member of the workman's family is entitled to an allowance for loss of time, the amount being fixed by the judge or arbitrator. An officer of the Trade Union is not entitled to any fee, excepting travelling expenses.

The Amount of Compensation.

The amount of compensation is as a rule readily susceptible of calculation on a basis laid down in the Act. Accidents are divided into two classes, those resulting in death, and those resulting in injuries which prevent the injured from earning full wages for more than the two following weeks. The compensation for death is payable in a lump sum; compensation for injuries is payable in weekly sums.

The Act fixes (*a*) a maximum and minimum amount of compensation payable in the case of a workman having been killed and leaving relatives wholly dependent on him for support; (*b*) a maximum amount if the relatives were partly dependent upon him; and (*c*) the maximum amount of the weekly sum payable for injuries.

Compensation for Death.

If a workman leaves a wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, stepson or stepdaughter, whom he entirely supported by his wages, the employer must pay at least £150 ($730); but he is not liable to pay more than £300 ($1460). The exact sum will depend on the average weekly earnings of the workman whilst at work for his employer. If he had been employed for three years or more, the amount is fixed by finding the average wages per week for the three years before the accident. If the three years' wages at that average wage come to more than £150, the employer must pay a sum equal to them; in other words the employer must pay 156 times the average weekly earnings. But if the workman had not worked for the same employer during the three years before the accident, his average wages per week while he had worked for his employer must be found out. When that is done the amount to be paid is three years' wages at that rate, that is 156 times his average wage. But his relatives must never get less than £150, excepting where the relatives were only partly supported by the workman killed, and in which the judge, arbitrator or committee think that less than £150 may be sufficient compensation. If a workman killed leaves none of the relatives specified living at his death, the employer must pay reasonable funeral expenses. Any dispute as to cases of dependency or as to the division of the compensation among the dependants is to be settled by arbitration.

Compensation for Injury.

Compensation for injury can only be obtained if the workman is unable to work for more than two weeks after the occurrence of the accident. At the end of these two weeks he may be wholly unable to work, or he may be able only to do a portion of his customary work. In either case he is entitled to compensation in the form of a weekly sum until he has completely recovered.

The amount of this weekly sum depends upon his average weekly wages before the accident. When a man is wholly unable to work, if he has been employed by the master for a year, the compensation is one half the average weekly wages earned by him during that period. If he has not been employed by the master for twelve months, the amount payable is half the amount of the average weekly wages earned by him whilst he has been employed by the employer. In no case, however, can the workman get more than £1 per week.

In the case of partial inability to work the compensation cannot be more than one half the weekly wages before the accident. The employer does not pay any compensation for the first two weeks after the accident.

It is to be noted also that when compensation is awarded in terms of a weekly payment, review of this compensation may be made on the application of either party at any time.

Treatment of Accidents.

When a workman has given notice of an accident, the employer may send a doctor to examine him. Unless he permits the doctor to do so no compensation is payable; but if he is not satisfied with the doctor he may get another doctor specially appointed to report under the new law. The doctor so called in is entitled to charge a fee, which the arbitrator may order the master to repay. When an injured workman has been drawing compensation pay for six months, the employer may then compound for any subsequent payments by paying a lump sum. In the event of the workman recovering more rapidly than was at first expected, or becoming worse than was at first expected, the rate of weekly payment may be revised. If the employer and the workman cannot agree the question may be settled by arbitration. Neither the weekly sum nor the lump sum in lieu of the weekly payment is susceptible to hypothecation for a workman's debts.

Registration of Compensation.

When the amount of compensation has been settled, notice must be sent to the Registrar of the County Court for the district in which the person getting compensation lives. It must contain a memorandum of the decision or agreement, and it will be entered in a special register, without fee. When an agreement is registered in this way, the memorandum has the force of a county court judgment. It must be signed by the parties or by the chairman of the committee or by the arbitrator, according to the method by which the agreement was arrived at.

Minor Regulations.

The Committee may order the money awarded by way of compensation to be invested in the Post Office Savings Bank, or it may all be invested in the purchase of an annuity from the National Debt Commissioners. The money so paid into the Post Office Savings Bank may be in excess of the amount usually permitted to be deposited in the bank. In case the employer becomes bankrupt before compensation is awarded and where he has insured himself against the working of the Act, those who undertake the risk must pay the amount to the injured party. The sum cannot be regarded as an asset of the employer.

(3) The Working of the Act of 1897.

The Act of 1897 came into operation only on the 1st of July, 1898. As it had been in existence for less than twelve months when I was in England in May it was impossible to obtain any decisive opinions upon its working, and when I

returned from the continent in September, although I saw a great number of persons who had experience in the working of the Act, the period even then was too short for decisive judgment upon its effects. Indeed several years must elapse ere these can be fully discovered.

The number of cases under the new Act is much larger than the number of cases under the Employers' Liability Act. This is mainly due to the circumstance that the Act applies to a larger number of persons. It is due also to the fact that all new legislation tends to produce a crop of litigation and especially a crop of appeals, until the effect of the alteration in the law has been thoroughly sifted and understood. While it is true that there has been a very large number of claims for compensation, it is also true that by far the larger percentage of these claims have been settled without appeal to the Courts. The new machinery which has been described above, of committee and arbitration, seems to have worked well on the whole. There has been, indeed, both on the part of the employers and on the part of the workmen a perfectly honest desire to work the Act with as little friction as possible. At first the uncertainty as to what would be the upshot of it led to a kind of panic, not so much among employers as among the Employers' Liability Insurance Companies. They held a very serious view of the risks, and therefore endeavored to obtain a premium which was so high that employers almost ceased to insure. The factory, mines and railway legislation which had been in force for some years had been effective in diminishing rapidly the number of accidents in proportion to the production, that is the amount of work done, yet the extension of the area of action by the new Act, introduced an element to which the then existing data did not apparently apply. In spite, therefore, of the greater definiteness of the new Act in respect to compensation, the Actuaries of the Insurance Companies were really at sea and their estimates of risks were very high. It required an experience of one or two years to enable a fair rate to be fixed. As a matter of experience in a certain class of manufacture, the nature of which I am not at liberty to mention publicly, the actual cost of compensation for accidents upon seventeen and a half million dollars in wages was about one-quarter per cent.; whereas the amount charged by the Insurance Companies was nearly double the cost. A curious point in connection with this is the very considerable difference in the net amount of the risk to the Insurance Companies as between England and Scotland, Scotland showing in some large industries the extraordinary amount of 50 per cent. greater cost than in England; in other industries only 10 per cent. greater cost.[1] The reason for this appears to be that litigation is more frequent and more expensive in Scotland than in England.

The statistics of cases brought under the Workmen's Compensation Act of 1897 are not available excepting to a very limited extent. During the first three months very few cases came before the Courts. The Act came into force on the 1st of July, 1898, that is to say, that the right to compensation under the Act accrued with regard to accidents happening on or after that date. Even if all of the accidents that occurred had been of such a nature that the Act applied to them, and if all of them had become subjects of litigation, in the ordinary course about a month would have elapsed before any cases could come before the Courts. Thus the statistics which are given in the paper issued by the Home Office in April, 1899, although nominally applying to six months really covered a much shorter period. The total number of cases in which compensation was claimed cannot be ascertained; (2) but I am informed that the Employers' Federation which

(1) For the use of the Government I have given some actual figures in this connection which I am not at liberty to make public, but which I have conveyed in a Confidential Report.

(2) Home Office. Workmen's Compensation Statistics of the proceedings in County Courts in England and Wales under the Workmen's Compensation Act, 1897, Employers' Liability Act, 1880, during the year 1897, London, 1899.—C. 9 251.

consists of the chief employers in the engineering, shipbuilding and mining trades had before them during the first nine months of the operation of the Act about 4,000 cases. Of these cases about 1,100 were submitted to arbitration or to the judgment of the County Courts.

The following is a summary of the cases whether of arbitration or of legal action in the County Courts from the 1st July to the 31st December, 1898.

ACTIONS IN COUNTY COURTS UNDER THE EMPLOYERS' LIABILITY ACT, 1880, DURING SIX YEARS, 1893-98.

1893....	419	Total Actions	..	Amount of damages awarded in			73	cases	..	£ 9,418
1894....	460	"	"	..	"	"	"	73	"	.. 11,343
1895....	485	"	"	..	"	"	"	75	"	.. 8,355
1896....	581	"	"	..	"	"	"	90	"	.. 12,303
1897....	688	"	"	..	"	"	"	88	"	.. 15,114
1898....	681	"	"	..	"	"	"	126	"	.. 16,853

WORKMEN'S COMPENSATION ACT, 1897.

Arbitrations in County Courts, 1st July, 1898, till 31st December, 1898.

Total cases	178
Settled by judge	104
Settled by arbitration	8
Settled by acceptance of money paid into court	18
Cases withdrawn, etc.	48
Settled in favour of plaintiff	101
Settled in favour of defendant	29
Amount of compensation, 48 cases, lump sums	£7,766
Amount of compensation, 53 cases, weekly payments	£33
Solicitors' costs awarded	£663

These cases represent, however, a very small proportion of the total number which formed the subject of claims under the Act.[1]

The details of the legal proceedings before the County Courts in England and the Sheriff Courts in Scotland are printed in the local newspapers. I have not thought it necessary to make a collection of these; but I have analysed those of the Reports which have appeared in the Labour Gazette of the Board of Trade, London, from the beginning of the operation of the Act until the 31st of December, 1899.[2] The following is the result of this analysis:—

(1) See Mr. Calder's estimate, *infra* p. 20.

(2) Since this Report was written, the useful "Workmen's Compensation Cases," London, 1899, edited by Mr. Minton-Stenhouse, has reached me. These reports have been utilized so far as possible, being referred to as W.C.C.

Analysis of Leading Cases Brought Under the Act.

Principal issues in action.	Court of first instance.		Appeal cases.		Labor Gazette month.	Remarks.
	Decision for plaintiff.	Decision for defendant.	Appeal sustained in favor of	Appeal rejected in favor of		
1. Administration					Oct., 1898	Liability not disputed.
2. Proximity		D			"	"
3. Administration					Nov., 1898	"
4. "					"	"
5. "					"	"
6. "					"	"
7. Dependency		D			"	
8. Misconduct of applicant		D			"	
9. Proper work		D			"	
10. "		D			"	
11. Proximity	P				"	
12. "		D			"	
13. Basis of compensation		D			"	
14. Proper work		D			Dec., 1898	"
15. Building claim		D			"	
17. "	P		P		"	
18. Basis of compensation	P	D			"	"
19. Misconduct of applicant		D	P		"	
20. Definition of accident		D			"	
21. Building		D			Jan'y., 1899	
22. Proximity		D			"	
23. Misconduct of applicant		D			"	
24. Rescue	P				"	
25. Misconduct of applicant		D			Feb'y., 1899	
26. Proximity		D	D		"	
27. Building claim		D			"	
28. "		D			"	
29. Benefit fund	P				"	
30. "	P				"	Liability not disputed.
31. Basis of compensation		D	D		"	"
32 "		D			"	"
33. Time for claim expired		D			"	"
34. Proper work		D			Mch., 1899	
35. "		D			"	
36. "	P			D	"	
37. Misconduct of applicant	P		P		"	
38. "	P		P		"	
39. Employers' Liab., and subsequent action under Compensation Act	P				"	
40. Proximity					"	
41. Scope of Act					"	
42. Illegal employment		D			"	
43. Proper work					Apr., 1899	
44. "	P				"	
45. Misconduct of applicant	P		P		"	
46 Definition of factory	P				"	
47. Proper work		D		P	"	
48. Definition of factory		P	D		"	
49. Building claim	P*	D†		D	"	
50. "	P			D	"	
51. Dependency	P		P		"	
52. Status of Judge in County Court	P		P		"	
53. Definition of factory		D	D		"	
54. Proximity		D	D		"	
55. Basis of compensation		D			May, 1899	Liability not disputed.
56. Security for costs for appeal	P				"	
57. Time		D			June, 1899	
58. "	P				"	
59. Definition of a ship	P			D	"	
60. " factory		D	D		"	
61. " a dock	D			D	"	
62. Employers' liability	P			D	"	Liability not disputed.
63. Basis of compensation		D	D		"	"
64. "					"	Compromised.

ANALYSIS OF LEADING CASES BROUGHT UNDER THE ACT.—*Con.*

Principal issues in action.	Court of first instance.		Appeal cases.		Labor Gazette month.	Remarks.
	Decision for plaintiff.	Decision for defendant.	Appeal sustained in favor of	Appeal rejected in favor of		
65. Security for costs in employers' liability case		D	D		"	
66. Proper work	P		P		July, 1899	
67. Risk of contractors	P			D	"	
68. Definition of engineering work		D	D		"	Liability not disputed.
69. Dependency	P		P		"	"
70. Illegitimacy of parties to claim		D	D		"	"
71. Defendants	P		P		"	"
72. Basis of compensation	P			D	"	"
73. "	P			D	"	
74. Building claim	P		P		"	
75. Proper work	P		P		"	
76. Assessment of compensation postponed	P			D	Aug., 1899	
77. Compensation not a bar to further proceedings	P				"	
78. Dependency	P			D	"	
79. "	P			D	"	
80. Definition of workman		D	D		Oct., 1899	
81. Defect in factory		D			"	
82. Ladder not a scaffolding		D	D		Nov., 1899	
83. Absence of parties	P		D		"	
84. Proper work	P			D	Dec., 1899	
85. "	P		P		"	
86. Proximity	P		P		"	
87. Dependency	P		P		"	
88. Payment during incapacity		D			"	New trial ordered on appeal.
89. Basis of compensation	P		D††		"	Liability not disputed.
90. "	P		P		"	"
91. Misconduct of workman		D	D		"	"
92. Previous bad health	P		P		Jan., 1900	
93. " " "		D	D		"	
94. Definition of accident		D	D		"	
95. Proper work	P		P		"	
96. Definition of factory		D	D		"	
97. " ship	P			D	"	
98. Assessment of compensation postponed					"	Compromised.
99. Assessment of compensation postponed					"	Compromised.

* County Court. † Arbitration. †† Appealed on ground that too little was awarded.

From the above statistics it will be seen that the clauses in the Act which have led to most litigation, and upon which the decisions by the lower courts have been most frequently reversed by the Superior Courts have been the clauses relating to accidents arising "out of and in the course of the employment," and to buildings.

The question as to whether the accident arose "out of and in the course of the employment" has given rise to a number of disputes about compensation. For example, in Case No. 43, an engine-driver was killed while he was on his way from duty on his engine to report himself at the locomotive office. The company said that he was not at the time of the accident in its employment. Judgment was given in favor of the plaintiff. In another case,(1) No. 36, a foreman in the employment of a railway contractor was walking to his work. When he was 100 yards distant from the place where his gang was working he was killed. The County

(1) Holmes v. Mackay & Davis (1899) 15 T.L.R. 351, W.C.C. p. 13.

Court Judge held that the accident had arisen "out of and in the course of employment," and found for the widow, but on appeal the judgment was reversed.

In Case No. 47 a workman was employed to attend to a steam engine in an engine shed and a mortar pan in the open air. His duty was to fire the boiler and start the engine and then to go out and feed the mortar pan. The shed had two doors, one large door at the end opposite to that upon which the mortar pan abutted, and the other quite near the mortar pan. In order to pass out of the door nearest to the mortar pan the workman had to pass beneath the shaft, while if he went out by the other door he did not require to run such a risk. He attempted to pass beneath the shaft and was killed. The County Court Judge held that the workman had not been guilty of "serious and wilful misconduct;" but he also held that although the accident probably arose in course of the employment it did not arise out of "the employment." He therefore gave judgment in favor of the employers. The Court of Appeal reversed this decision, and held that the accident arose "out of and in the course of the employment."

As regards the "building clause," there is also much difference of legal opinion. For example, in Case No. 49, a workman was cleaning and painting the outside of a house over 30 feet high. The rung of the ladder on which deceased was standing broke and he fell to the ground and was killed. The arbitrator held that the building was not being repaired within the meaning of the Act, and that a ladder was not a scaffolding. He made his award in favor of the employer and submitted the two points as stated for the decision of the County Court Judge. The judge reversed the decision of the arbitrator on both points and made an award in favor of the claimant. The Court of Appeal reversed the judgment, holding that the arbitrator was right in his interpretation of the Act. In another case, No. 50 (1), a workman was working in a building used for stables, the object of his work being to strengthen the building with iron stakes. The workman stood on some planks about eight feet from the ground. The height of the building was 28 feet from the ground to the parapet, but to the top of the roof was 36 feet. Two questions were raised, first, as to whether the building was over 30 feet in height; second, whether it was being constructed or repaired by means of scaffolding. In the County Court the plaintiff obtained judgment for compensation. On appeal the Court held that the building exceeded 30 feet in height, but that it was not a building which at the time of the accident was being either constructed or repaired by means of scaffolding. The building had been constructed, nothing was out of repair, what was being done was neither construction nor repair.

Several other points appear in different cases. (2) For example, it is held in Case 42 that illegal employment voids a claim for compensation, as in the case of a child under the statutory age being employed.

As regards the relations between the Employers' Liability Act and the Workmen's Compensation Act, the clause which entitles a claimant under the first who has been non-suited to claim under the second has been variously interpreted. In case No. 39, for example, it was held by the arbitrator that it was open to the claimant for compensation to enter proceedings under the Workmen's Compensation Act even although he had allowed the opportunity to do so which was presented by the Judge of the County Court in giving his judgment, to pass by. On the other hand the Court of Appeal, in Case No. 62, held that the change of proceedings from one Act to the other should be made "then and there," that is to say, at the time that the first judgment is given. This note is put to the Judgment:—"If this were not the true construction of the Act a workman who had failed in action under the Employers' Liability Act would never stop under

(1) Hoddinott v. Newton, Chambers & Co., Ltd., (1899) 15 T.L.R. 299, W.C.C. p. 62.
(2) These may be gathered from "Workmen's Compensation Cases," cited above.

the sub-section last mentioned for compensation under the Compensation Act, and would always take fresh proceedings under that Act, in which case the judge could not deduct the costs of the former action from the compensation awarded." (Edwards v. Godfrey, Court of Appeal, May 13, 1899.) 15 T. L. R. 365, W. C. C. p. 32.

The wording of the English Act has disclosed a great number of ambiguities which have resulted in many appealed cases. For example, the expression "in or near a factory" is so vague as to have given rise to a very large number of cases, which were disputed on the ground of the distance between the place where the accident occurred and the factory of the employer. Again, also, "factory" in this Act has not been regarded by the courts as synonymous with factory in the "Factory and Workshops Act," for in Case No. 46 a threshing machine working in an open field was held to be a "factory" within the meaning of the Act. Again, the question as to whether a ship in a dock comes within the scope of the Act or not has been the subject of litigation.

There is more definiteness than has ever before been the case in respect of the basis of compensation, the basis being the average wages earned prior to the accident. Yet this has been shown to be still too vague, and a large amount of litigation has taken place to determine what is the meaning of "average earnings," whether this means the aggregate amounts earned divided by the number of weeks that have elapsed during the total period of employment including idle time due to illness or strike for example, or whether the net number of working days must be used in the calculation.

A few points of special note may be mentioned.

1. The Act of 1897 in affording compensation for accidents does not nullify any claim that may be made in respect of Common Law or in respect of the Employers' Liability Act. For example, in Case No. 77 before a jury, the applicant having already received compensation under the Compensation Act, sued for payment out of a benefit-fund to which he and the employer had alike contributed, and won his case.

2. As regards "dependants," illegitimate children are held not to be dependants within the meaning of the Act and are therefore barred. (See Case No. 70.) The question as to what constituted dependency was the subject of litigation in a large number of cases.

3. In Case No. 83 it was held that the absence of one of the parties when the case comes up before the court of first instance does not involve a mere non-suit; but the Judge is obliged to go into the evidence that he has before him and upon that to fix the compensation. A new trial was ordered by the Superior Court in a case in which the sheriff had simply given a non-suit because of the absence of the plaintiff.

4. A contractor who executed some work personally and who was injured in the doing of it, and who sued his employer was non-suited on the ground that he was not a workman within the meaning of the Act.

5. Among the ambiguities which have occasioned litigation in connection with the working of the Act of 1897 is the ambiguity of the word "about" in relation to places at which the accident occurs. It has been held, for example, that an accident happening near to the employer's work rendered the employer liable; but an accident happening at some distance from his work did not render him liable. (1)

6. An ambiguity also exists in respect to the expression "proper work," and the case of a workman voluntarily undertaking in a case of emergency to do the

(1) In some cases, e. g. in certain railway companies this has been found to be so grave an inconvenience that the companies have voluntarily extended the application of the Act to the case of draymen, whose injuries when they do occur frequently do so while in the discharge of their duty they are at a distance from a railway station.

work of another is not provided for. Nor is the case of a workman undertaking voluntarily a dangerous duty for the purpose of saving life or property.(1)

Mr. Calder has estimated that 32,000 accidents came within the scope of the Act during the first year of its operation, from 1st July, 1898, till 30th June, 1899. Of these 837 were fatal accidents. The proportion of claims which became subjects of litigation was 1.25 per cent. of the total; the others were settled by private arrangement. In spite of the difficulties which have arisen in the interpretation of certain clauses of the Act of 1897, Mr. Calder thinks that t[illegible]as contributed to place employers of labor upon a common footing in reg[illegible] temporary and permanent disablement of workmen. (2)

ACCIDENT RATES IN FACTORIES UNDER FACTORY ACT (1878) DURING 1898.(3)

Industry.	Number of persons employed.	Accident rate per 1,000 employees.		
		Fatal.	Non-fatal reportable to surgeon.	Non-fatal reportable to inspectors only.
Textile—				
Jute	43,008	0.04	4.51	1.60
Cotton	532,920	0.06	4.35	1.60
Worsted	142,450	0.05	3.50	0.94
Wool	131,685	0.08	3 29	0.98
Flax	108,871	0.01	1.72	0.31
All other textiles	118,753	0.02	1.28	0.60
Textile total	1,077,687	0.05	3.51	1.20
Non-textile—				
Wood, sawmills, carpenters	93,141	0.17	10.80	5.11
Machines	447,958	0.19	8.61	17.84
Appliances, conveyances, tools	232,902	0.13	8.60	18.35
Metal extraction	34,138	0.97	7.11	15.01
Metals, founding and conversion of	261,397	0.28	6.96	14.89
Ship and boatbuilding	132,465	0.53	6.06	53.10
Chemicals	88,814	0 35	4.64	12.01
Paper, printing and stationery	238,269	0.10	4.00	2.34
Miscellaneous articles	135,517	0.12	3.41	4.58
Food	130,530	0.16	3.13	3.11
Other non-textiles	195,768	0.07	3.11	2.62
Drink	82,359	0.17	3.00	5.25
Print, bleach and dye works	138,769	0.15	2.76	1.56
Gas	51,702	0.31	2.28	12.40
Glass	29 758	0.44	1.81	26.60
Metal galvanizing	18,909	0.10	1.47	12.85
Clothing	228,064	0.01	1.47	0.50
Clay and stonework	125,271	0 21	1.11	2.34
Non-textile total	2,665,731	0.19	5.80	11.28
Grand total	3,743,418	0.15	4.78	8.38

(1) See judgment in Matthews v. Bedworth (1899), 106 Law Times, 485, W.C.C. p. 124.

(2) J. Calder, op. cit. p. 74: Most of the appeals to the Superior Courts have been made in connection with accidents happening in places to which it was doubtful whether or not the Act applied. Yet the accidents which were the subject of such appeals (the decisions governing no doubt, however, other cases which were not the subject of litigation) formed a small part of the total number of reported cases of accident, as the following shows:—

Proportion of cases of accidents appealed to total reported cases of accident 1st July, 1898–30 June, 1899:

Fatal accidents, 21 per cent.
Non-fatal accidents, 13 per cent.

Cf. Calder, op. cit., p. 73.

(3) The Prevention of Factory Accidents, etc. J. Calder [Factory Inspector], London, 1899, p. 68.

(4) Criticisms of the Act from the Employers' Point of View.

The objections of the Employers' representatives to the Act as it stands are:

1. That while there is a limitation to the amount which may be paid as compensation for the death of a workman, there is no limit to the amount which may be claimed for injury. A weekly allowance may continue for life. Thus it may be cheaper for the employer to have a man killed outright than to have him merely injured. (1)

2. The employers regard the two-weeks' limit as a very moderate one. They think that if the period were shorter it would lead to more malingering than now exists. The employers endeavor, where it is possible to do so, to take up a case of accident and to compromise it at once in order, as they say, to keep it out of the hands of speculative lawyers, who take up cases in which there is a fighting chance, with the result that the workman may get very little of the compensation. As regards the proportion of cases in which the old principles of employers' liability and liability at Common Law apply to those which are brought, and could only be brought, under the Act of 1897, I am informed by the Secretary of the Employers' Federation, Mr. Biggart, that up till June 30th, 1,155 cases had been settled under the Act. Of these cases only 64, or less than 5½ per cent, had this element of employers' liability or common law, so that the Workmen's Compensation Act resulted in nearly 1,100 cases in which compensation was paid or the case otherwise settled, these cases being such that had the Workmen's Compensation Act not been passed, no claim would have lain at all. When it is recognized that the employer is liable under the old Acts, an endeavor is made at once to compromise the case. As a rule, when an accident case is taken into the courts, it is taken under the new Act rather than under the old one, the general idea being that a favorable verdict is more likely to be obtained by the plaintiff, since the onus of proof has been shifted from the workman to the employer.

Other objections which are brought against the Act really lie almost equally against the previous Employers' Liability Act, as, for example, that there is some malingering and that there is some interference by the Trade Unions between the employer and the workman. (2)

In 1897 prior to the passing of The Workmen's Compensation Act, Mr. Livesey, manager of the South Metropolitan Gas Co., had devised a mutual scheme to provide compensation for accidents, each man contributing one half-penny per week and the company one penny per week per man. The benefits included pay for the whole period of sickness as a result of accident provided the period was not less than three days. Since the passing of the Act the rules have been passed by the Chief Registrar of Friendly Societies and the workmen have "contracted-out" of the Act. The system adopted by the company involves the investigation of every accident however slight. This investigation is conducted before a jury. The object of the company is stated to be to obtain the intelligent co-operation of the men in the prevention of accidents and Mr. Livesey says that the Mutual Fund coupled with the jury system is calculated to secure that object. The adoption of this method by the company in anticipation of the Compensation Act involving as it does in a sense the system of private jurisdiction affords an interesting means of comparison between the effects of such a method and those of the method of arbitration under the Compensation Act. It appears that one effect is the same in both cases, namely the great increase in the number of claims. The company employ about 4,000 persons.

(1) This was, however, also the case prior to the change in the law.

(2) From the point of view of certain employers, some of the Trade Unions are employing the Act for the purpose of blackmail. Two cases have been quoted to me, both fought by the same union, in one of which £900 ($4,374) was claimed and £200 ($972) was awarded. In the other case £200 was claimed and £150 was awarded.

Prior to the adoption of the scheme the number of accidents reported to the company was 110 per annum; during the first six months the number rose to 119 or 238 per annum and in the next three months to 102 or 408 per annum. According to Mr. Minton-Senhouse, of 119 recipients of compensation under the scheme only 54 would have been entitled to compensation under the Act. The provisions of the Act would have given these an average equal to $11.50 whereas under the scheme they received an average compensation equal to $20.(1)

(5) Insurance Against Employers' Risks under Workmen's Compensation Act.

The general effect upon the Employers' Liability Insurance Companies of the passing of the Act has already been noticed.

The offices in England that have undertaken Employers' Liability Insurance under all the Acts relating to it are as follows:—

Sun Life Assurance Society.
Guardian Fire & Life Assurance Co.
The Law Union & Crown Fire and Life Insurance Co.
The Rock Life Assurance Co.
The Scottish Metropolitan Life Assurance Co.
The National Assurance Co. of Ireland.
The Royal Exchange Assurance Co.
The Lancashire Insurance Co.
The Yorkshire Fire & Life Insurance Co.
The Manchester Fire Assurance Co.
The Ocean Accident & Guarantee Corporation.
The Palatine Insurance Co., etc.

Excepting the last two the offices mentioned are tariff offices, that is to say, they agreed upon a tariff of premiums for risks under the Employers' Liability Act, the Workmen's Compensation Act and Common Law. The two offices mentioned and other non-tariff offices have adopted rates of their own. During 1899 the Royal Exchange Assurance Co., the Lancashire Insurance Co., the Yorkshire Fire & Life Insurance Co., and the Manchester Fire Assurance Co. joined the non-tariff offices. The non-tariff offices as a rule undertake risks at much lower rates than the tariff offices, charging sometimes one-third and sometimes one-fifth of the tariff rates. The Ocean Accident & Guarantee Corporation in particular did an enormous business at low rates. It would appear that there is a certain advantage in working Employers' Liability and Fire Insurance together as a connection formed for one readily avails for both. About May, 1899, the tariff rates were materially reduced and from November, 1899, the rates have been altogether suspended.(2) It is to be observed however that the class of risks called "Catastrophe Risks," being those to which certain industries are liable, are still subject to original tariff rates, even the non-tariff Companies sometimes charging the same rates. A combination of Insurance offices has been formed in London with aggregate assets amounting to $25,000,000 for the purpose of reinsuring Catastrophe Risks, such risks being the loss of five lives or five permanent disablements.

While the effect of the passing of the Compensation Act could not be immediately ascertained, yet it was possible for the insurance companies to make

(1) These details are taken from a letter from Mr. Livesey to Mr. Minton-Senhouse published in "The Case Law, etc." cited above p. xi. It is fair however to say that the determination on the part of Mr. Livesey to make practically obligatory contributions on the part of his workmen to a mutual fund led to the serious strike of the gas-stokers at his works in 1889. The drawback about all such schemes is that although they make for industrial peace, they diminish or appear to diminish the mobility of the workmen.

(2) Hazell's Annual, 1900, p. 695.

some estimate of the number of working people who had been brought under the operation of the Act and also of the aggregate amount of wages paid to them. Mr. S. Stanley Brown, General Manager of the Employer's Liability Insurance Corporation, Ltd., estimates (1) that about 5,000,000 of working people come within the scope of the Act. This is considerably less than one-half of the total number of employed persons in the United Kingdom. The insurable interest represented by the wages of these 5,000,000 of employees is estimated by Mr. Brown at £350,000,000 a year. Mr. Brown has investigated 75,000 cases of accident. Of these cases 58.8 per cent. involved sickness of two weeks duration and less, 40.4 per cent. of over two weeks duration and .8 per cent. were fatal cases. Of those non-fatal cases which involved over two weeks duration the average number of weeks per case in respect to which compensation was paid, was 6.8. Mr. Brown also estimates that the percentage of employees leaving dependants would be 56 per cent. leaving the number of cases in which no dependant was left at 44 per cent. The cost of insurance as worked out by Mr. Brown for an employment of 100,000 men is equal to about .83 per cent of the wages paid.

Mr. Brown also gives the following examples of rates charged: (2)

Textile Industries	0.5	per cent. of wages paid.
Cabinetmakers (no circular saw risk)	1.0	"
Engineers (shop work)	1.5	"
Coal merchants	2.0	"
Railway and general contractors (excluding the erection of iron-work, tunnelling or blasting)	2.5	"
Dock service	3.0	"
Engineers—bridge building	3.5	"
Stevedores (on Clyde)	5.0	"

The high premiums first charged by the tariff companies have had the inevitable result of encouraging combinations of employers for insurance upon the mutual principle. These combinations have been subjected to a good deal of criticism, and some of them have already collapsed on account of their attempting to do the business on inadequate terms. It is obvious that the members of such a combination must all be employed in businesses that do not vary widely as estimated by a danger tariff. The combination must also accumulate a reserve.

The chairman of the Ocean Accident and Guarantee Corporation, in his speech at its last annual general meeting, stated as regards these mutual associations, that less employers are joining them "for the very good reason that a responsible member whose desire is naturally to limit his own risk sees that by joining such an association he increases and trebles the same by becoming liable for the heavy risks of his neighbours whose operations he cannot control, and mutual insurers do not care to undertake a liability which may continue during the lives of young annuitants and be payable by their executors for a period of half a century hence. The better class of mutual insurers are, therefore, rapidly withdrawing from these mutual associations, leaving a residuum of weaker brethren, whose want of capital or inefficiency of works suggests the advisabiliy of inducing others into the trade to share their risks."(3)

It is to be noticed that it has been settled by the courts that a policy of insurance against liability under the Act requires a 10s. ($2.50) stamp.(4)

(1). S. Stanley Brown "Workmen's Accidents in the United Kingdom." Transactions of the Second International Actuarial Congress, London, 1899; p. 690 *et seq.*

(2). *Op. cit.* p. 701.

(3) Hazell's Annual, 1900, p. 696.

(4) Lancashire Insurance Co. v. Commissioners of Inland Revenue Workmen's Compensation Cases (Clowes), 1899; 1 Q.B.D. 353 (Div. Ct.). See Minton-Stenhouse, Case Law of Workmen's Compensation Act, p. 7.

(6) Criticisms of the Act from the Workmen's Point of View.

While the Act came into operation on the 1st of July, 1898, fully a month elapsed ere the working men awoke to the facts that there was such an Act, and to the enlarged powers of claim for compensation which they had under it. The Scotch workmen awoke first, and in about a month there was a larger proportion of cases brought in Scotland than there was in England during the first three months of the working of the Act. A sufficient time has not even yet elapsed for the growth of a decisive opinion upon. So far as the experience of the Act has gone, the principal objections from the point of view of the workmen, are:

1. That it is not wide enough in its interpretation.
2. That the payments for compensation should begin from the date of accident.
3. That since notice of an accident is compulsory under the Factory Acts, notice by or upon behalf of the injured workman should not be necessary as a preliminary to action.

Some details of these and of other objections may be given.

Objections by Trade Unions.

The objections which are entertained by the Trade Union leaders may be gathered from the following series of resolutions which were brought before the Trades Union Congress, held at Plymouth in September, 1899:

Trades Union Congress, Plymouth, 1899. Combined Resolution Relating to the "Compensation Act."

"That, in the opinion of this Congress, the Workmen's Compensation Act of 1897 should be amended.

"1. By the introduction of a clause including all trades and occupations, ashore and afloat; without restrictions.

"2. That the clause relating to wilful and serious misconduct be deleted.

"3. The introduction of a clause guaranteeing to injured workers 50 per cent. of their weekly wage; averaged from the standard wages earned during weeks when full time has been worked. Lost time in any weeks caused by sickness, accidents, holidays or want of trade not to be included in the 52 weeks' average.

"4. That the payments for compensation shall commence from the date of accident.

"5. The abolition of contracting out.

"6. That the restrictions contained in the schedule of the Notice of Accidents' Act, 1894, shall not operate."

Moved—Mr. W. Brace.

Seconded—Mr. John Ward.

I attended this congress, and am bound to say I was rather impressed by the almost entire want of interest in the subject which was displayed by the congress. Some three or four members gave evidence of having mastered it and of being really enthusiastic; but otherwise the subject did not appear to excite the slightest interest. This perhaps may be held as on the whole indicating that so far as the workmen are concerned the Act is working satisfactorily.

Mr. Thomas Burt, writing on 28th August, 1899,(1) says: "It is too early "to give any final and definite opinion as to its value (speaking of the Com- "pensation Act). . . We (referring to the miners of Northumberland) have "not had much friction or litigation arising out the Act. So far as non-fatal

(1) Letter to Mr. Minton-Senhouse published in "Case Law," p. x.

"accidents are concerned, an agreement (1) was entered into between our Trades "Union and the Coal Owners' Association. This has, on the whole, worked "smoothly and satisfactorily. . . The officials of our union fear that aged "and infirm workmen will be dismissed in greater numbers than heretofore. "We have had a few cases of the kind, and should doubtless have had more if "the coal trade had not been exceptionally brisk of late. This is an evil that "cannot very well be lessened or removed by legislation.

"One great defect in the Act is that, in the case of a youth who may be per- "manently disabled, his compensation is based on the amount of the wage he "has been receiving. . .

"Of course, the Act leaving as it does outside its operations about one-half "the workmen of the country, cannot long remain as it is. Time will show "what amendments are needed."

Criticism by the Fabian Society.

An acute criticism of the Act and its working is to be found in a tract issued by the Fabian Society. This criticism is by far the best from the working man's point of view.

1st. It regards the Act as being too limited in its scope, and proposes the extension of the measure to include not merely seamen (a special measure for compensation to whom the Government pledged themselves two years ago); but also all workshop operatives, builders, agricultural laborers, shop assistants and at least those domestic servants who are engaged in hotels and institutions. It is proposed to make the test of the applicability of the Act, not the frequency of accidents in certain employments, but the fact that a worker is injured. (2)

2d. This criticism also points out that injury to health may be caused gradually by industrial processes as well as by an accident which occurs suddenly, and that the employer should be liable for this as well as for misadventure to life or limb. (3) It is pointed out that in chemical works particularly a slight accident which lays a man aside for a few weeks will entitle him to compensation, but if he is affected permanently by the insidious and deadly lead poisoning he is not entitled to compensation.

3d. It is also insisted that a man who is laid up for a week is entitled to his proportionate compensation as much as a man who cannot go to work for a month.

4th. It is pointed out that the injured party has to recover the amount of compensation awarded him from his employer and that if he is awarded a pension and if the employer becomes bankrupt without having commuted this pension there is no remedy. It is suggested that the pension should be made a preference claim upon the estate of the employer, or that as in Germany the workman should be entitled to compensation from an accident insurance fund, and that the fund should recover from the employer where this is possible. It may be noted on this point the tendency on the part of employers to commute pensions at once. On the other hand the Fabian Society suggests that compensation should always be in the form of pensions because of the risk of investment by workmen.

5th. It is suggested that the Compensation Act has gone too far in making employers liable for all kinds of accidents. When negligence on the part of the employer is proved liability should lie as it does at common law and under the

(1) "The basis in every case to be the county average rate of wages, at the time of accident, of the class to which the injured workman belongs."

(2) It will be noticed that this point of view has never been advanced at the Trades Union Congress.

(3) Compare case No. 20 in list of cases above.

Employers' Liability Act. But where due precautions have been taken and an accident nevertheless occurs, it is to use the old phrase of the Marine Insurance policies, "An Act of God."(1) The Fabian Society points out what is very obvious that when the next large colliery explosion occurs it will probably completely ruin the employers unless they are fully insured. Of course the suggestion is that neither the employer or the workman should suffer when it is an "Act of God," but that an accident insurance fund guaranteed by the state should; in other words, that the state should compensate the workman directly in every case, and in case of negligence should recover the amount from the employer.

The Fabian Society also objects to the element of notice by the workman. It regards it as unnecessary, since by law notice must be given by the employer. Under the Factories' Act the Factory Inspector is required to make inquiry into nearly all accidents. (2) It is suggested that on the mere report of the inspector the state should at once pay the compensation and then claim from the employer. If the employer resisted, further notice could be given. In no case should an injured party require to go to the Court of Appeal on a question of law.

On this it may be observed that appeal on questions of law would simply by this method be shifted from the Court of Appeal to the Factory Inspector or the Home Office. There might besides be a disposition towards awarding compensation solely in cases where an obvious breach of the Factory Act had occurred.

6th. As regards the defence of common employment and contributory negligence, it is suggested that some of the antiquated legal doctrines which still cling to industrial legislation and cause frequently contradictory decisions in the law courts should be cleared up.

7th. The abolition of "contracting out" is recommended on the ground that there is no reason why a workman should contribute at all towards his own compensation. On this point it may be suggested in addition to the considerations mentioned above, that as a large number of the schemes which have already been authorized by the Registrar of Friendly Societies as offering a legitimate method of "contracting out" are friendly societies and as some part at any rate of the influence and functions of friendly societies would be taken away from them if no "contracting out" were allowed, the friendly societies might be disposed to object to this. On the other hand, it is obvious that if the workman is entirely relieved from anxiety about providing against the chances of accident, if his wages remain the same and if he is of provident disposition he may be able to take advantage of the Friendly Society, for so much as that is worth, to as great an extent as before, for there can be no objection to his voluntarily insuring himself in addition to the likelihood of his securing compensation under the Act. At the same time it must be admitted that the persumption is rather against this supposition. Even in the German system the workman has to bear a proportion (11 per cent.) of the cost of insurance as against accidents.

8th. The scale of compensation is objected to, one-half of the wage for temporary disablement being regarded as insufficient, and the pension amount being regarded as very inadequate. It is urged that both should be based on a real living wage.

(7) Notes on These Criticisms.

In addition to the special points that have already been noticed, it may be observed that the extension of the measure is a much more difficult matter than at first sight appears. Indeed it becomes increasingly obvious that if the measure

(1) This has always been admitted in the Trades Union Congress.
(2) There are however, many cases to which the Compensation Act would and the Factory Act would not, apply.

were extended to all industries it would be inoperative because of the inability of the small employers to pay, would ruin the small employers or would require to be conducted after the German model. This of course does not apply to the case of seamen which will, no doubt, be dealt with in accordance with the pledge of the Government.

The question of the period which should elapse before compensation is given is a fair subject of discussion. The fear expressed on behalf of the employers that to make the payment date from the date of the accident would give rise to malingering hardly seems likely to be realized. If the payment is found to be legitimate there does not seem any valid reason for making the workman suffer to the extent of a fortnight's accident allowance. He is either entitled to accident allowance for the whole period, or he is not entitled to any at all. The granting of compensation for shorter periods than two weeks is another matter. No doubt this would greatly increase the number of cases and would probably weigh down any scheme with excessive administrative expenses. The matter of malingering is a more general question than this[1], but the large number of claims for compensation understood to have been made during the past year and the comparatively small number of these which have been allowed by the employer to go into Court seems to suggest that in the employers' view at any rate malingering is not an important factor.

As to causing the payment of compensation to follow upon the report of the factory inspector, so far as I can see, the factory inspector is hardly the proper person to give a final judgement as to whether "serious and wilful misconduct" has taken place or not. This is really a matter of evidence, and although the process is perhaps cumbersome, it may be difficult to provide a remedy without permitting appeal either to a court of Arbitration or to the Courts of Law. If the decision of the factory inspector were to be made final, an injustice might be done as grave as that which may be alleged to be done in compelling the injured party to go to the Court of Appeal when his employer chooses to dispute the judgment of the lower court, and if it were to be subject to appeal, the advantage of it is not apparent.

The scale of compensation is however the rock upon which nearly all of compensation schemes split. If the compensation is too low the Act confers no benefit upon the working people. If it is too high, not only does the system lay itself open to abuse through malingering; but also from the effect upon the industry of any excessive charge for compensation. In the case of a State compensation, or a State guaranteed compensation the matter assumes very serious financial proportions, as in the case of Germany where in spite of the grumbling of the working people that the compensation is inadequate there is a considerable deficiency which actuaries insist, ought to be larger than appears from the accounts; that is, that the State Department of Insurance will require to add largely in the future to the amounts annually set aside to provide for pensions.

(8) BIBLIOGRAPHY OF WORKMEN'S COMPENSATION FOR INJURIES, GREAT BRITAIN.

Acts of Parliament:—

The Fatal Accidents Acts, 1846 and 1864, 9 and 10 Vict., c. 93; 27 and 28 Vict., c. 95.

The Employers' and Workmen's Act, 1875, 38 and 39 Vict., c. 90.

(1) When the German Law came into operation there was during the first year or two a great deal of malingering. But inspection under the Act greatly reduced this element. It is now believed that there is very little malingering, probably not in more than 4 per cent. of the total number of cases is there any trace of it. On the serious aspect of the question of malingering called in Germany "simulation" in the early years of the operation of the Law, see for example J. Graham Brooks, "A Weakness in the German Imperial Socialism," Economic Journal, Vol. ii. p. 302, London, 1892.

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For extended list on the whole subject see Bibliography published in Circular No. 1, Series B of the Musée Social, Paris, 1896.

(9) Accident Insurance in Germany.

In England the history of workmen's compensation for injury due to accident is the history of a legal question, viz, the liability of the employer. It was scarcely necessary in giving an account of it to regard the contemporary political and social development. *The Workmen's Compensation Act of 1897* was not the outcome or any special propaganda; but was due to the desire of Mr. Chamberlain to do something towards redeeming his pledges of insurance or pension legislation. In England the legislation was the outcome of imitation, and was not based upon any conscious system. There was, as is usually the case in England, a practical groundwork in the shape of the German experience, and there was no systematised theoretic groundwork whatever. In Germany the case is totally different; the German legislation is inextricably interwoven with the political and social situation.

In Germany when the accident insurance laws were brought forward they were formulated by economists who had thoroughly threshed out from their point of view the theoretical basis of the laws. They were in no sense a leap in the dark. The promoters of them were under no illusions on the subject. To the charge that they were "socialistic," Wagner replied: "Not as I understand Socialism." "Socialistic," said Bismarck, with greater bluntness; "call it what you please: it is the same to me." (1)

The changes made in the English legislation by the Act of 1897, may not unfairly be regarded as having been at least hastened more or less definitely by the continental legislation on the same subject;(2) and the continental legislation really had its origin in the German Insurance Laws which grew directly out of the message of the German Emperor on the question on the 17th November, 1881. This message however was undoubtedly the outcome of the propaganda previously carried on by the Economists Wagner and Schäffle, partly through their pamphlets and personal influence and partly through the "Verein für Sozial-Politik." This movement in Germany was altogether different from the so-called Socialist movement, although it is true that Bismarck was predisposed to the mild form of Socialism advocated by Lassalle, and was therefore not unwilling to take the views of the duties of the State as expounded by Wagner and the other "Socialists of the chair." The position of Wagner was fundamentally different from that of the State Socialists, as represented by Marx, for example. It is unnecessary here to discuss the full relations of the German labour legislation of which accident insurance was only a part, to the Socialist movement in Germany, especially since this relation has been discussed with much knowledge in the "Special Report upon Compulsory Insurance in Germany," by Mr. John Graham Brooks.(3) The fundamental distinction between the movement which resulted in the invalidity and accident insurance in Germany, and collectivism as propounded by Marx is, that while opposed to laissez faire and all that that implies, the promoters of the labour legislation had no thought of abolishing the system of wage labour and private capitalism; but had in their minds chiefly a new State which should not be merely a policeman, but which should have as its primary business the positive welfare of the people. As Wagner puts it, about 1879, "in the administrative functions of

(1) Fourth Special Report of the Commissioner of Labor Compulsory Insurance in Germany . . . by John Graham Brooks. Washington, 1893, p. 23. From the Marxist point of view, of course, Wagner was quite accurate. The accident laws are not socialistic, for they do not touch the wages system nor do they interfere with the private ownership of the means of production. Bismarck did not trouble himself with these refinements. It was sufficient that he recognized in them an engine for securing what he conceived to be the general interest.

(2) For Trade Union Agitation on Employers' Liability see *supra* p. .

(3) Washington 1893.

the State, of the parish or other public bodies, there should be included such measures as may help on the moral, intellectual, sanitary, physical, ecomonical and social advancement of the mass of the people, and so far as may seem necessary and expedient, the expenditure of public money for these purposes without fear of the public communism which would to some extent be thereby encouraged. This implies the recognition of the principle of State help, legislative, administrative and financial, for the lower classes, congenial with self-help to the co-operative system."(1) From this it is evident that in general terms the advocates of these measures accepted the system of employment for wages and sought only to introduce such improvement into industrial arrangements as might result in raising the level of the comfort of the working people. These views supported as they were, by the powerful influence of Wagner, Schmoller and others were adopted by Bismarck and carried into effect. Labour legislation in Germany was carried moreor less in the teeth of the manufacturing interests by the aid of the Conservative landowners. (2) The Conservative party, especially in Prussia, was the more drawn to support these measures that they seemed to offer a solution of social difficulties which was within the power of administration to accomplish, and which at the same time took as it were the ground from the feet of the Socialist propaganda. The immediate outcome of the message of the Emperor William was the Sick Insurance Law of the 15th June, 1883. This law was conceived with the idea of utilizing to the fullest possible extent existing institutions for sick relief and for incorporating these in the new measures.(3)

The fundamental principles of it are:—

1st. Its compulsory character.

2nd. Its mutual basis. Apart from existing organizations which were recognized in the Act, there were prescribed the following obligatory associations; (1) local sick clubs, (2) factory sick clubs, (3) builders' sick clubs, (4) sick clubs of the guilds, (5) the miners' sick clubs. (6) the parish sick insuruance, comprising all those who are liable to insurance but do not belong either to a voluntary nor to an obligatory sick association. The purpose of the insurance is to secure as perfectly certain and adequate relief in case of illness during at least 13 weeks. The receipt of this relief does not imply pauperism, nor is the relief intended to to be conceived upon a more substantial scale, but is intended to be sufficient, while no stigma whatever attaches to the receipt of it. It is a payment to which the workman is entitled just as much as he is entitled to his wages. The minimum of relief to which all persons who are injured have a legal claim includes:

(1) Free medical attendance, medicines, spectacles, trusses, bandages, etc., from the beginning of the illness.

(2) In case of incapacity for work from the third day of the illness sick pay for every working day amounting to one half the daily wages upon which the contributions to the insurance fund have been based; or in special cases free admittance to an hospital, together with half the sick pay for the family.

(3) Burial money of twenty times the average daily wages.

(4) Sick relief to women during four weeks after confinement.

It is open to anyone by paying double the ordinary insurance rate to secure sick pay to the full amount of the average daily earnings. The associations may also, if so advised, extend relief from 13 weeks to a year and forwomen to six instead of four weeks after confinement. The daily sick pay may also be raised, as may the burial money. The sick allowance may also be extended to the other members of the family and to injured persons during convalescence. The contribu-

(1) Quoted by Mr. Brooks in Report above cited, page 24.
(2) As was the case with the Factory Acts in England.
(3) Fully described in "Guide to Workmen's Insurance of the German Empire."—Berlin, 1897.

tions are fixed by the law at from 1 to 1½% of the usual local daily wages of ordinary labourers, and for others they must not exceed 2 to 3% of the average daily wages of that class of workmen for whom the club has been formed. The law binds the employers when depositing the contributions of their workmen to pay themselves a sum equal to one-half the contributions of the employee, so that two-thirds of the whole are furnished by the workmen and one third by their employers. The cost of management which is mainly placed in the hands of the workmen along with the contributing employers under the supervision of the insurance authorities is paid by each club for itself. In the parish insurance it falls on the parish and in the industrial and building sick clubs it is borne by the employers. At present there are insured about eight millions of persons in the National sick system, and annually twenty-five million dollars are expended in Germany for sick relief alone.

It has been necessary to explain the organization of the Sick Relief Clubs, since they formed the indispensable basis upon which the German system of compensation for accidents has been reared. The Sick Insurance law of 1883 was followed by the first Accident Insurance law of July 6th, 1884. This law has been supplemented by subsequent laws, particularly the law of May 28th, 1885, March 15th, 1886, and May 5th, 1886. It may be noted also that it was further supplemented by the Invalidity and Old Age Insurance Law of June 22nd, 1889. The principles of the German Accident Insurance Law are the same as that of the Sick Insurance Law, namely, compulsion and utilization of existing institutions. This law makes insurance compulsory for workmen and officials in all industries liable to damages in case of accident.(1) The insurance is carried out under the guarantee of the Empire, on the mutual system by the employers united in trade associations. These trade associations may embrace the different branches of industry in a district; or they may embrace the branches of industry throughout the Empire. The trade associations are legal persons and are autonomous. They may constitute branches or sections over which they may retain control. The object of the insurance is to secure compensation for bodily injury, or for death resulting from an accident to the workman whilst he is working for his employer. Injuries produced purposely and injuries inflicted otherwise than while he is at his employment, are excluded. The compensation includes the cost of the cure, and, in addition, a fixed allowance during the period of incapacity for work, or, for any fatal cases, burial money and an allowance to the survivors from the date of death. When the injured person is totally disabled, the compensation amounts to two thirds of his average year's earnings; for lesser injury a proportionate amount. During the first 13 weeks after the accident, (the so-called "waiting-time" Karenz-oder Wartezeit) the Sick Associations which have been described, or in their absence, the employers are required to provide medical attendance and other relief within the limits of their functions, as may be required. From the beginning of the fifth week the sick pay is raised at the cost of the employer to at least two-thirds of the standard wages. If however, it is necessary in the proper treatment of the injured to extend the period during which the Sick Associations undertake the care of the invalid beyond the thirteenth week until a complete cure is effected, the Trade Associations may either arrange with the Sick Associations for reimbursement of the costs incurred by them for the additional period, or they may undertake the charge of the patient themselves. The amount of compensation is determined after a police investigation by the administration of the Trade Association (Berufsgenossen

(1) Compare the suggestion of the Fabian Society that the English system should be based upon the principle that an injured person is entitled to compensations irrepective of the character of the industry to which he belongs, whether it is dangerous or otherwise, in other words, that the criterion of compensation should be the damage which has been done rather than the general liability to damage. Fabian Society Tract cited above.

schaft). From the decision of the Trade Association an appeal may be made to an arbitration court composed of two members of the Trade Association and two representatives of the injured workman and a presiding magistrate. The court has the character of a special court of law. In complicated cases an appeal from its verdict may be made to the Imperial Insurance Department (Reichs-Versicherungsamt). The payments of compensation are made through the post office upon the orders of the directing board of the Trade Associations. These advances are refunded at the close of the financial year by the board. To cover these advances—the management expenses and the fixed rate of the reserve fund—the members of the association are assessed in such a way that only the actual expenditure of the past year and not the capitalized value of the annuities will be raised.* In this way it is supposed that every employer contributes to the funds in proportion to the risks to which he exposes his Association. The risks for each separate establishment are determined by a danger tariff drawn up by the Association, and by a tariff in proportion to the amount of wages paid. Since the Trade Association, as a whole, and its individual members, have a strong interest in preventing accidents, the Associations are empowered by law with the prerogative of prescribing regulations for the prevention of accidents and of inflicting a penalty in the form of higher assessments upon those who neglect these regulations so far as the employers are concerned, of inflicting fines upon the workmen. There are now sixty-five Sick Associations, and in 1897 sixty of these had already introduced such a list of rules and appointed 204 superintending engineers. The workmen are not members of the Trade Associations and they do not contribute to the funds of these, but they do contribute to Sick Relief Funds as above described.

According to the calculations of the Insurance Department the workmen bear 11 per cent. of the entire burden for accidents while the employers have to contribute three times as much to the sick relief insurance alone. The employers thus participate in the management of the Sick Associations and the employed have a share in the administration of the accident insurance, not directly in the Trade Associations, but through their representatives who are chosen by the directing boards of the sick relief clubs to take part in the police investigation of accidents cases and also to discuss preventive regulations and to take their share in the proceedings of the Arbitration Courts of the Imperial Insurance Department.

The Imperial Insurance Department (Reichs-Versicherungsamt) is the supreme court for organization, administration and judicial procedure. The president is appointed for life by the Emperor on the recommendation of the Bundesrath as also are several of the higher officers. There are besides temporary members, namely, four delegates to the Bundesrath, representatives of the employers and workmen in equal numbers; two legal assessors are added to decide important cases, such as may be brought to the Insurance Department on appeal and in the adjustment of claims as between associations. State Insurance offices have besides been established in some of the Federal States of the German Empire.

The accident insurance law, while relieving the employer from person liability on account of accident to the injured person does not relieve him from liability to his Trade Association; nor has the law relieved Trade Associations from liability in cases where the negligence of the employer has been proved, to award in excess of the amounts payable under the accident insurance law. Even where injured persons are indemnified directly by the employer, the Relief Societies are not relieved from their obligations and are bound to render the customary relief, a portion of that being in

* It is possible that the working of the Act on this principle will result in deficiencies which will have ultimately to be made good by the State.

cases of extended illness reimbursed by the Trade Associations. In the German accident insurance law the workman has thus a certain relief; in case of injury he has not to prove negligence on the part of the employer; he does not require to proceed at law against him; he has only to have his case certified by the medical officer and thereupon relief accrues immediately. When the case has been investigated through the machinery of the Act, compensation accrues after the lapse of a certain time as described. In the first instance the accident insurance law did not embrace the numerous industries engaged in transportation, nor did it embrace the telegraph or the army and navy. It was extended to cover all these fields in 1885, and in 1886 it was extended to agriculture and forestry, including the case of small farmers with yearly earnings not exceeding $500 (2,000 marks). Contributions may be assessed under this head, not according to the number of hands employed, which sometimes may be none at all, but on the basis of direct taxation, especially the land tax and small proprietors may under certain circumstances be exempted. The fundamental provisions are the same as those of the original law. In 1887 the system was extended to building and marine accident insurance. It had also been proposed to extend it to handicrafts and small trades and home industry and to persons engaged in commerce. This would have covered an additional number of about two millions of employed persons and about one million of establishments; but it has not yet been found practicable to extend it in this direction.

Criticisms upon the German system from the side of the workmen chiefly refer to the alleged inadequacy of the amount of relief and to the details of the administration particularly on its medical side. It is alleged, for example, that in certain cases the exercise of special skill on the part of the surgeon or medical man would result in a speedier cure in the average case than now occurs where the general practitioner alone is called in. Thus, for example, in injuries to the eye the medical officer of the sick relief club would not be so competent to give such advice as would result in a speedy recovery as an oculist. And again also any accidents which result in nervous or in partial paralysis the skill of a surgeon specially devoting himself to this branch of surgery might be relied upon to effect a speedier cure than would the less special skill of the ordinary club doctor. It is pointed out by H. Seelmann (1) that the possibility of double procedure which has been indicated above may result in contradictory decisions. Thus the workman may sue his employer alleging negligence, while the employer may defend the action and allege wilful misconduct on the part of the workman. The law courts may find that the workman has been guilty of misconduct, while the Trade Association may find him entitled to compensation.

The question of notice is also the subject of criticism. When no notice is given of an accident by an employer either because he is not aware of the accident or because he does not think it such an accident as may be necessary to give notice of, the workman may be in receipt of relief from his sick fund and on the expiry of the fifth week may claim for the relief to be made up to two-thirds of his wages. This claim may be refused. If it is refused he then cannot bring action until after the expiry of thirteen weeks from the date of the accident.(2)

In general there has been a good deal of difference of opinion in regard to the expediency of having a long or short waiting time (karenz-zeit). Naturally it has been conceived that local boards composed of small groups of persons intimately acquainted with industrial conditions in their immediate neighborhood are more likely effectively to control slight cases of accident, which indeed form the bulk of the cases, than larger bodies, which would not necessarily have such

(1) Seelmann, Hans, Das Streitverfahren in den Reichsversicherungsgesetzen Systematisch dargestelt, Berlin, 1899.

(2) This at all events seems to be the burden of the complaint made by Herr Seelmann.

intimate touch with the workmen. It is for the slight cases within the control of these local bodies that the system of the waiting-time has been devised.

In Germany, the Sick Associations and the Parish Clubs above mentioned have been in a fairly strong financial position, and the comparatively long waiting time of 13 weeks was devised with this in mind. In Austria, on the other hand, the sick clubs have not been strong financially and a 4 weeks' waiting time has been adopted there. But this has resulted, in Austria, in a large number of slight cases, that is to say, cases which required more than 4 weeks' attention, but less than 13 weeks' attention coming before the upper courts, thus actually increasing the expense of the administration of slight cases. There has therefore been a disposition to increase the waiting-time in Austria to 13 weeks with some modification of the liability of the sick funds in connection with the extended period,(1) and in Germany, on the other hand, the commission considering legislation on accident insurance has resolved upon a diminution of the waiting time from 13 to 4 weeks on account of the fact that at present the sick funds have to bear the burden of nearly all the accidents, for the slight accidents form an immense proportion of the total, and the sick funds are therefore undoubtedly burdened so far as the number of cases is concerned. The shortening of the waiting time from 13 weeks to 4 would, according to the German experience, result in doubling the number of cases requiring compensation. The lighter cases would be increased sevenfold. However, it is the case that the Trade Associations are already under a recent law, 10 April, 1892, under the necessity of at once extending medical aid in cases of sickness arising out of accident, and more and more use of this has been made in the general interest.

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(1) Zacher, "Invaliditäts und Altersversicherung. Krankenversicherung (Statistik), Unfallstatistik Unfallversicherung." Jena, 1897.

(2) On all these questions see Zacher *loc. cit.*

"Bericht der Kommission über den Entwurf eines Invalidversicherungsgesetzes. No. 270. Reichstag. 10 Legislatur-Periode. 1 Session, 1898-99."

"Zusammentstellung des Entwurfs eines Invalidversicherungsgesetzes. Zu No. 270. Reichstag. 10 Legislatur-Periode. 1 Session 1898-99."

(10) Accident Insurance in France.

The law of compensation for injury in France depended until 1887 upon articles 1382 to 1386 of the *Code Napoléon*, which simply fixed the responsibility for injury upon the person who caused it, either by his negligence or by his imprudence. The first proposal of change was brought forward in 1880 by M. Nadaud. In 1887 the Chamber of Deputies passed a bill which substituted for these articles the principle of trade risk. In 1890, M. Roche, Minister for Commerce, introduced a bill which originated compulsory insurance. This bill was the basis upon which the Commission on Labor (la Commission du Travail) constructed a scheme for the organization of compulsory assurance by means of district mutual associations analogous to those of Austria. This bill was passed by the Chamber by a majority of 493 to 4, in 1893; but was rejected by the Senate, which, however, regarded as necessary a special guarantee of the compensation payable to the victims of accidents and to their representatives. The Chamber had committed itself to the principle of compulsory assurance, while the Senate rejected compulsion, but nevertheless desired a special guarantee. To meet this dead-lock between the two Chambers, the Government devised the expedient of making a state guarantee of the statutorily permitted compensation, this guarantee to be sustained by a tax on licenses, to be borne by the whole of the firms in the trade. The State guarantee rendered obligatory insurance unnecessary. The Senate then passed a bill cutting out, however, the right on the part of the injured claimant to demand the capital value of his sick or accident allowance. The bill was finally passed on the 26th of March, 1898, and the law was issued on the 9th of April, by which date it is commonly known.

The law applies in general terms to all trades where mechanical power is employed; but claims can only be made in respect of yearly earnings up to 2,400 francs. The period of "waiting-time" is only 4 days. The compensation provided for cannot be diminished excepting in the case of an "inexcusable fault" (faute inexcusable). Compensation is barred only in the case of intentional fault (faute intentionnelle) If the "inexcusable fault" has been committed by the employer, the compensation may be increased up to the total of the annual wages. Accidents are verified by a legal process. Arbitration courts are not established; employers are not compelled to insure. They may meet their obligations in any way they please. On the side of the State a special guarantee fund is formed. It is managed by the officers of the National Old Age Pension Fund (la Caisse Nationale des Retraites pour les Veilles). The amount of the tax yielded by the addition of the trade licenses is passed to the credit of the guarantee fund. In the event of an employer being unable to pay the required compensation in the case of an injury, the injured person receives compensation from the fund and the fund then takes his place as creditor. It will do so, however, only if the employer (or in the event of his being insured, the insurance society) becomes bankrupt. In order to protect the Guarantee Fund, all societies carrying on an insurance business against accidents to workmen, are required to form reserves. The Act has been in operation for so short a time that details of its workings are not yet forthcoming; but one of its effects is supposed to be likely to be the extensive development of accident insurance companies and of mutual insurance societies. While the premium for accident insurance is at present high in France, it is believed that when insurance becomes practically universal the rate will be much lower. The number of workmen who

will benefit by the law is calculated to be 4,000,000, and the total annual charge for accidents when the working of the system comes to a permanent basis will be nearly 100,000,000 of francs. The effect of rigid control of the investments of private societies upon the accumulations which they must make in order to render their annuities secure is difficult to forecast. The tax which will constitute the Guarantee Fund will yield at present only about 750,000 francs ($150,000). It is supposed that this is ample to provide for failures amounting to 1 per cent. of corresponding expenditure. The tax may, however, be increased or diminished (1).

(11) Accident Insurance in Switzerland. (2)

Prior to 1875 the systems of employer's liability which were in vogue in different cantons, and even in different municipalities in Switzerland were very varied. The general principle of Common Law underlay them all—the principle, that is, of personal responsibility for acts done by one person to another. The Employers' Liability System was introduced to a limited extent by its adoption with regard to railways in 1875. The principle was extended under the Factory Laws of 1877. In 1883 the law became general. During the period from 1880 to 1890 two contrary opinions were entertained by controversialists upon the subject. One was to extend the principle of the Employers' Liability to all employments, and the other (held by the late Herr Klein, of Basel) was to replace all the mere liability laws by an insurance system. Both proposals were referred to the Federal Council. There the first was vigorously supported, and the second as vigorously opposed by Herr Numa Droz. Herr Droz was at the time the most powerful influence in Switzerland, and in 1887 he readily succeeded in accomplishing the extension of Liability Law, and so in setting aside entirely for the time being the movement for the adoption of an insurance system. The extension of the liability law so brought about did not, however, include the small industries, nor did it include agriculture. It happens that the small industries in Switzerland are characteristic of the country, and what Herr Forrer describes as "lack of logic" in this limitation of the scope of the liability laws, led to the renewed agitation for the insurance system.

The movement for insurance was importantly promoted by the replacement of Herr Droz by Herr Deucher in the Department of Industry. Herr Deucher was a partisan of the insurance system, and the result of his appointment was the preparation of a revision of the constitution in order to enable the Swiss Confederation to legislate for sick and accident insurance. This revision was accomplished in 1890. It is notable that the revision includes not merely accident insurance but also sick insurance.

This was mentioned because it became apparent to those who were going into

(1) The above details are taken from "Louis Weber, Actuaire de l'office du Travail (Paris) État Actuel de la Question des Accidents du Travail en France." Transactions of the Second International Actuarial Congress, London, 1899. See also Labour Gazette, London, 1898, Vol. VI., p. 132, and Zacher, "Die Arbeiter-Versicherung in Frankreich," Berlin, 1898. For extended Bibliography see Circular No. 1, Series B., Musée Social, Paris, 1896.

(2) The detailed history of the long public controversy in Switzerland on the question of obligatory insurance is to be found in Foreign Office Reports, Miscellaneous Series Nos. 160 and 202, 1890 and 1891; and in the address of Herr Forrer delivered at Berne 20th December, 1898, "Kranken—and Unfallversicherung," Bern, 1899. See also Bundegesetzes betreffend Haftpflicht aus Fabrikbetrieb, 1881. (Bern) 1881; Scherer H. "Die Obligatorische Unfallversicherung." Zurich, 1886; Botschaft des Bunde-rathes an die Bundesversammlung betreffend Unführing des Gesetzgebungsrechtes über Unfall und Krankenversicherung, (Bern 1889); Vorlage des Bundesrathes und Beschlüsse des Nationalrates (A) Krankenversicherung (B) Unfallversicherung, (Bern 1897); Berichte der Kantonsregierungen über die Ausführung des Bundesgesetzes betreffend die Arbeit in den Fabriken, 1897 and 1898: Aarau, 1889; and in the Labour Gazette, December, 1899, vol. vii., p. 355.

the matter that it was important to deal in a comprehensive way with sickness in preparing to deal with accident. This changed the character of the question entirely from one of Employers' Liability to one of Obligatory Insurance against sickness and accident alike. The first proposals for the following up of the revision by a special law on the subject were formulated in 1892, and in 1893 these were referred to a large commission of experts. In 1894 the action of the Socialist party apparently had the effect of delaying the development of the subject. The demands which were made by this party included an insurance against loss of work from whatever cause, by means of public insurance or by ate institutions with public subventions. Immediately after these deman. ere brought forward by means of the popular initiative, the laboring organizatic. nd the Socialist party prepared another demand for free medical attendance ar. for the exclusion of the participation of the employer in the administration of insurance funds; they also insisted upon the cost of insurance being maintained by the employers alone. This project obtained only 40,000 signatures and was not therefore made the subject of a popular initiative.(1) While these movements were going on the insurance scheme as previously developed was left in abeyance until it was seen what the result of the other project was going to be. On the defeat of the Socialists and organized labor movement, the insurance proposals were revived in 1895, were worked out anew and were passed by the Federal Council. They were dealt with by the Cantons in the same year and in 1898 the whole subject was threshed out in the National Assembly after it had been considered by a Commission. Further revisions followed, the ultimate result being the formulation in 1899 of a law of Sick and Accident Insurance including military insurance, in 400 articles. Financial difficulties stood rather seriously in the way for a while, the Federal Government was willing to pay the whole of the surplus available for that year, namely 5,000,000 francs, there was a certain hesitation on the part of the Federation to secure the payment of 7,250,000 francs per year, which was the entire cost of the scheme in its entirety. Proposals to obtain money from the Tobacco Monopoly were seriously entertained by some; but on the part of others there was an indisposition to mingle the two subjects together. The final result of the long discussion was the passing of the law subject to Referendum on October 5th, 1899; but the law is not to come into operation until January 1st, 1903, this date being fixed because the revision of the Customs Tariff in that year will enable the Federal Government to provide means for the carrying out of the law. The extent to which the Swiss advocates of Obligatory Insurance were willing to go was limited gravely by financial considerations. They felt that while the adoption of the system was expedient and would produce important savings, yet the disturbance which would be occasioned by a drastic change in the law might for small country like Switzerland have very grave results. The saving upon the amount expended for poor relief alone has all along been expected by the devotees of the measure to be very large. The municipalities will thus clearly gain at the expense of the Confederation.(2)

The Law as it stands imposes Obligatory Insurance upon every person over fourteen years of age carrying on work otherwise than on his own account. Even if the person draws no wages he is included. The basis of the system is a series of Sick-Funds partly territorially and partly otherwise arranged. Every person must belong either to a District Fund or to some other authorized Fund. All the Funds are subject to supervision by the Cantons and to control by the Confederation. The benefits are free medical attendance from the commencement of the sickness, with medicine and appliances, together with an allowance amounting to sixty per cent. of the earnings, or less, in proportion if incapacity is only

(1) Deploige, Simon, "The Referendum in Switzerland" (Eng. Trans.) London, 1898, pp. 237 and 238.

(2) Chiefly from Herr Forrer op. cit.

partial. The Cantonal authority may on the recommendation of the District Sick Fund Committee increase the allowance to the full amount of the wages. These benefits last only one year. The revenue of the District and Factory Sick Funds consists of grants from the Federal Government and of contributions from employers and work people. These contributions are fixed on a danger tariff. In the case of the higher rates the employer is not entitled to deduct the excess from the wages of his work people. The employer pays the full premium and deducts the authorized proportion from the wages paid.

Accident Insurance is accomplished by the payment of one-fifth of the premium by the workman, three-fifths by the employer and the remaining fifth by the Federal Government. In addition to this subvention the Federal Government will make annual grants to Sick Funds, etc., and will defray the cost of establishing and administering the federal insurance office. The benefits are the same as those for sickness excepting when in case of permanent incapacity from accident the injured person will receive from the Federal Institution a monthly allowance equal to 60 per cent. of the diminution of his daily earnings likely to result from the accident. The Federal Insurance Office has power to make rules for prevention of accident. A special court is established for dealing with certain cases of disputes arising out of the law.(1)

(12) Accident Insurance in Austria.

Accident insurance in Austria practically dates from the Accident Insurance Law of 1887. Prior to this law, in addition to recourse at Common Law, the injured person had the right of action against his master if it could be shown that the master had been careless in retaining in his service the person by whose fault the injury was caused (sections 1314 and 1315 Austrian Code). A further modification for the protection of the special case of railway servants was effected in 1869. This modification had the effect of shifting the presumption of blame upon the shoulders of an employer.(2) The leading features of the Austrian are somewhat similar to those of the German law. The essential point is compulsory insurance. Under the law of 1887 "all workmen and officials employed in manufacturies, foundries, mines, (those for certain minerals excepted), wharves, shipworks, quarries, and all localities pertaining to these works," and in general for all works including agriculture, and forestry in which machines are worked by mechanical power were brought under the law of Obligatory Insurance. The supplementary law of the 20th July, 1894, extended obligatory insurance to persons employed on railways, in theatres, in fire brigades, and in cleaning streets, houses, chimneys and canals.(3)

In Germany the organizations of Accident Insurance is industrial. In Austria it is territorial. The only Austrian "trade association" in the German sense is that of the railways. From the Austrian point of view the territorial system offers a prospect of the ultimate unification of the whole system of life, health and old age insurance. The policy of the Austrian Government seems to be making in the direction of creating a local Industrial Board which will have under its charge the inspection of factories, mines, etc., as well as the administration of Workmen's Insurance. While the system is thus essentially a state system inasmuch as it involves a central board as a supreme authority, administrative and judicial, it also involves a devolution of these powers to local authorities. At present there are seven of these local boards and the policy seems to involve their multiplica-

(1) The Labor Gazette, Vol. VII, p. 355.
(2) A. Pearce Higgins "Employers' Liability . . . ," p. 107.
(3) Karl Kogler, (Director of the Workmen's Accident Assurance Establishment for Lower Austria Die Arbeiter-Unfallversicherung in Osterreich." Transactions of the Second Actuarial Congress. London, 1899, pp. 713 *et seq.*

tion as may be found necessary. Both employers and employed are represented upon the Boards and are thus brought into close association. It is even proposed to place in the hands of these Local Boards the disposal of the insurance funds which might thus be used for building workmen's houses or other local purposes. In detail, the Austrian allowance for total incapacity amounts to about 60 per cent. of the yearly wages. For death, the amount awarded depends upon the numbers and status of the dependants. illegitimate children as well as legitimate being provided for although not at the same rate. The specification of dependency is very precise in the Austrian law. In Austria, the principle of accumulation of funds for the purpose of covering future liabilities has been observed instead of the Assessment system which has been adoped in Germany. These two principles characteristic of the Austrian method namely, the *accumulation of funds* and *territorial administration* are due to Messrs. Emil Steinback and Julius Kaan. These principles have been adopted by Norway and have been proposed for Switzerland and Holland.(1)

(13) Accident Insurance in Italy.

The Accident Insurance Law of Italy was passed on the 17th March, 1898. Prior to its adoption, the subject was discussed at great length in the Italian Parliament and in the press and in magazines, chiefly by economists and lawyers. The principle points of difference were the following :—The expediency of State regulation of industry ; the system of professional risk as opposed to civil responsibility ; the expediency of obligatory insurance.

The two principles upon which the Italian law is based are "professional risk" or "trade liability" and "obligatory insurance." The number of persons who are brought within the scope of the law is estimated at 1,700,000.(2) The average daily wage was estimated by the late Senor Auriti(3) at two lire for the men and one and a half for the women. These figures yield according to Senor Luzzati, the following results :—(*a*) An annual wage bill of 935 millions of lire ; (*b*) a charge upon the Italian employers for insurance against accident in terms of the Law of 8,400,000 lire according to the Italian accident tables, or 9,750,000 lire according to the German accident tables ; and the net results that the charge is equivalent to one per cent. of the amount of the wages paid.

This net figure of one per cent. would, however, according to Senor Luzzati have to be increased, in order to provide for the costs of administration and the cost of legal proceedings (4) in any estimate of the total cost to the community of the working of the law.

"In taking account of the effects that may be foreseen from all these new elements of cost . . . it may be concluded that the opinion . . . of Senor Vitelleschi . . . was not exaggerated, when he estimated that the annual charge upon industry would be from 10 to 12 million lire.

(1) Kogler op. cit. See also Zacher, "Die Arbeiter-Versicherung in Oesterreich und Ungarn," Berlin, 1899 ; and "Gebarung und die Ergebnisse der Unfallstatistik . . . ," (annually) (*e. g.*) 1896. Wien, 1898.

(2) These and other details are derived from Luzzati, G., (Manager of the Italian Accident Assurance Company of Milan), "Les Accidents du Travail en Italie." See also Zacher "Die Arbeiter-Versicherung in Italien," Berlin, 1899 ; and Fessiore, Edgardo. "L'Assicurazione degli operai contro gli Infortuni sul Lavoro," Roma, 1899, (containing a copy of the Law of 17th March, 1898, with comments).

(3) In his Report to the Italian Senate, February, 1892.

(4) This is an element very difficult to estimate. In Germany the administrative costs involve, according to Senor Luzzati, an expenditure of 20 per cent. upon the amount of compensation paid, while the costs of legal proceedings under the existing laws are stated at five times those which fell to be paid under the former laws. cf. Luzzati op. cit. p. 740. The German Statistical documents do not, however, so far as I have been able to discover, precisely bear out these figures.

"Whatever may be the reason, and by whatever name it may be called, this sum represents a new and heavy impost upon Italian industry, which, in its present circumstances cannot bear it without injury or danger; and it will necessarily have to throw the burden partially upon labour and partially upon the consumers; hence upon the shoulders of the very class which it was desired to favour by the new law." (1)

The adoption of the new law upon Workmen's Compensation had been to a certain extent prepared for not merely by the existence of a large number of accident insurance companies; but also by the establishment at Milan in 1883 of the National Fund, and by the establishment in 1893 of the National Assurance Fund against Labour Accidents. The proposal to give these funds a monopoly was rejected by the Italian Senate, so that they work alongside the private institutions which undertake accident insurance.

(14) Accident Insurance in Russia. (2)

Through the kindness of His Excellency Sir Charles Scott, H.B.M. Ambassador at St. Petersburg, I am enabled to give the following Memorandum upon the state of the law as regards employers' liability in Russia. The Memorandum has been specially drawn up for this report by Mr. John Michell, Consul-General for Great Britain, in Russia.

Memorandum Upon Compensation for Injuries to Workmen for Accident by the Consul-General for Russia at St. Petersburg.

No special provisions are contained in the Russian code of laws for insuring working people at factories, mills, workshops, &c., against want, in the event of any of them being incapacitated from labour through illness, accident or death. The only legislation on the subject is to be found in the General Code of Civil Laws, viz., in sections 683, 684, 685, 574, 660, 661; partly also in the law relating to inspection of factories. The latter, however, partake of the character of police regulations, and have more for their object the prevention of accidents than anything else.

(Sgd.) John Michell.

St. Petersburg, Nov. 14th, 1899.

Translation from the Russian.

Sect. 683. Persons suffering harm or loss in consequence of death or injury to health shall receive compensation from proprietors of railways or steamships on the basis of the following rules:

1. Proprietors of railways or steamship enterprises (the Crown, companies or private individuals) are bound to compensate everyone who may have suffered harm or loss by death or injury to health caused in the exploitation of railways or steamships. The compensation is fixed in accordance with sections 657, 658, 659, 660 and 661 with the observance of the rules laid down as under. 2. The proprietors of railways and steamships are absolved from the necessity of compensating those who may have suffered injury or loss when they can prove that the accident did not occur by fault of the manager of the enterprise or their agents, or that it arose from uncontrollable circumstances. 3. The application of the rules 1 and 2 cannot be set aside or modified by private managements with

(1) Luzzati op. cit. p. 740.

(2) See also V. P. Letvenov-Falenski, "Employers' Liability," St. Petersburg, 1899. (In Russian); and Pokotiloff, A., "Compensation for Accidents in Russia." Transactions Second International Actuarial Congress . . . . . London, 1898. p. 703.

railways or steamship passengers or other persons. 4. The extent of the compensation must depend exclusively on injury suffered in each separate case. 5. Compensation is made in accordance with the wishes of the injured (a) either in the shape of a sum of money paid down at once; or (b) in the shape of an allowance paid annually or at determined periods. 6. In the event of new circumstances coming to light the amount of compensation periodically paid can either be increased or diminished by a court of law at the request of the party receiving or paying the compensation. 7. Claims for compensation must be made within a year if the accident has occurred on a railway and within two years if on a steamer. Railway proprietors and steamship owners have the right of recovering from their agents who may have been the cause of an accident any amounts they have been compelled to pay in compensation.

Sect. 684. All persons are bound to make compensation for injury or loss caused to anybody by their act of commission or omission, even if such act or neglect do not constitute a crime or offence, if it were proved that he was not obliged to act as he did by requirement of the law or government or in necessary self-defence or by a concurrence of circumstances which they could not avert.

Sect. 685. Injuries and losses so occasioned are compensated under the rules laid down in sections 671 and 673.* When these injuries and losses necessarily result from some structure established by the defendant, such as a mill, sluice, dam, barrier, etc., and the same continues to cause anybody injury or loss, or threatens fresh injury or loss, the defendant is bound to abolish such structure, and should he not do so within a given term the abolition shall be carried out by the police.

Sect. 574. As under the general law no one without the adjudgment of a tribunal can be deprived of rights belonging to him, every detriment to property and losses and injuries caused to any persons on the one hand impose an obligation to afford, and, on the other, to create the right of demanding compensation.

Translation from the Russian.

Sect. 657. When it shall be established that the person who has lost his life in consequence of a crime committed on him had supported by labour his parents, wife or children, if he possess no other means, or if such be insufficient, out of the property of the person who was the cause of death, the court shall apportion sufficient maintenance for the family of the deceased, the amount allotted being commensurate with the property of the guilty party.

Sect. 658. All expenses attending the medical treatment, nursing and funeral of the person deprived of life shall be defrayed out of the property of him who was the cause of death.

Sect. 659. In the event of the deprivation of life of a person of the taxable class, all arrears of taxes due to the Crown shall be recovered from the property of him who was the cause of his death.

Sect. 660. Anyone guilty of causing injury to health is bound to repay all expenses attending the medical treatment and nursing of the person whose health he has injured, and if the person injured have a family who is supported by his labour, he who has caused the injury in question shall pay the expenses of the maintenance of the family to the complete restoration to health of the injured party.

Sect. 661. If anyone by the commission of a crime or offence committed against a person shall suffer such injury to health that he is permanently disabled to earn his livelihood, the party guilty is bound to provide for the sufferer and his family in so far as his means will permit, paying annually a sum fixed by the courts for the purpose until the death of the person whose health has been

* Sect. 671. Refers to compensation to be made in cases of appropriation of property belonging to othe persons in which restitution is to be made in kind or in value.
Sect. 673. Refers to compensation for destruction or injury to property.

injured, then his parents and wife; so long as she does not remarry, and after the death of the parents, until the sons attain majority and the daughters contract marriage.

(14) General Concluions.

In forming general conclusions concerning the working of the new laws upon workmen's compensation which have been recently passed by nearly every country in Europe, regard must be had to the facts that (*a*) during the past few years the industrial and commercial populations of Europe have been enjoying a period of remarkable prosperity, and (*b*) that the strain upon any system of insurance does not come upon it fully until it has been in existence for a few years.

(*a*) The industrial prosperity in Europe has not been confined to England. Germany, France and to some extent Russia have also enjoyed it. Wages have been relatively high and profits have been large. Under these circumstances payments by way of premiums or even actual disbursements for accident-costs are likely to pass without serious question. No doubt the larger the number of persons employed, and the greater the amount of production, the greater the number and the costs of accidents; and as trade becomes less brisk, a diminution all round may be expected, of accidents as well as of wages and profits. The amounts paid by way of compensation for accidents will be less, but the administrative expenses will not be materially diminished, while the "sick funds" may have to bear heavier charges.

(*b*) The "assessment system," as in Germany, and the "accumulation system," as in Austria, are alike on their trial; and both may have serious strains to endure should a succession of bad harvests or other potent causes produce a falling off in the earning power of those who just now are able to support without difficulty the burden of the charge.

The following special points may be noted:—

(1) The dependence of English legislation upon the old principle of employers' liability with recent "inversion of proof" under the Workmen's Compensation Act.

(2) The adoption of obligatory insurance by Germany, Austria and several of the smaller European countries.

(3) The adoption of the principle of "assessment" buttressed with reserve funds by Germany.

(4) The adoption of the principle of "accumulation of funds" against liabilities in respect of pensions by Austria.

(5) The adoption by France of the principle of State guarantee of compensation, the State having recourse against the employer.

(6) The tendency towards bureaucratic management, which is most manifest in Germany, modified in Austria and confined to control in France and in England.

(7) The association in Germany especially of group autonomy with bureaucratic control; the trade associations being self-governing within large limits.

(8) Relief, in Germany for example, of the injured workman without the necessity of incurring the cost in time and money of fighting to the Court of Appeal for his compensation.

(9) In general, continental legislation may be said to have gone far towards providing certain compensation to the workman for injury, irrespective of the culpability or even of the liability of the employer.(1)

(1) On the above and other similar points, see Bödiker 1, "Die Arbeiterversicherung in den Europaischen Staaten," Leipzig, 1895; the interesting review by H. W. Wolff, Economic Journal, vol. 5, p. 612; Clay. W. J., "The Law of Employers' Liability and Insurance against Accidents" in the Journal of Comparative Legislation, vol. ii, 1897, pp. 1-111, and Flux, A. W., "Compensation Acts in Europe," Economic Journal, vol. viii., p. 559.

(10) In adopting any legislation in the direction either of the continental methods or of the English methods it would be essential to discover so far as possible to what extent any proposed scheme will simply redistribute an existing burden with an added cost for the redistribution and to what extent it will impose fresh burdens upon industry or upon the community. (1)

In Germany, as will be observed from the particulars given with reference to sick and accident insurance existing associations were incorporated into the insurance system. So far as Germany is concerned it would appear that this union of State administration and quasi-voluntary effort has been on the whole successful

The English system involves a modification of this in respect, that while there is no obligatory insurance as in Germany, there is obligatory compensation, the liability for which compensation may be insured against by means of "contracting out," provided this "contracting out" be done through approved benefit societies. This provision is objected to by the Trade Unions and is probably destined to some modification. It does not, however, appear as yet to have any considerable influence upon the friendly society system as a whole. A comparatively small number of societies have applied for approval under the Compensation Act. (2) This suggests that the Friendly Society managers do not think that the Act will interfere with their business to any extent. But what would the effect upon the societies be, if as is the case with analogous societies in Germany, the Trade Unions and the friendly societies were to be regarded as liable to give medical aid, etc., in all cases at once, the sum so expended to be afterwards recouped by the employer or by the State? The difficulty of predicting the effect of any such movement has in England made the working people and the Government alike pause.

The German system may fairly be described as a system of compulsory insurance, in which the premium is paid partly by the particular enterprise or business concern, partly by the industry or group of industries to which the business concern may belong; partly by the workmen as individuals; partly by workmen in groups (sick associations); and partly in case of need and for purposes of administration by the State. Prevention of accidents and compensation for them when they do occur are both rendered more effective, it is thought, by mutual liability instead of individual liability.

The English system, on the other hand, discourages "mutual liability" by placing barriers in the way of "contracting-out," while the English trade unions appear to desire to abolish all forms of "contracting-out," which policy, if it were fully developed, would involve more firmly than ever the fixing of individual responsibility upon the employer, whether he was shown to have been to blame for the accident or not.

Expensive as the German system is, it is more logical than the English one. In Germany the employer is liable at common law and under the old Liability Laws for accidents caused by his own negligence; but, for all those accidents which are not due to this cause but which occur to his workmen, the responsibility and loss are distributed by means of obligatory insurance. Under the

(1) Compare the case of Italy in the practical paper of Senor Luzatti, quoted above.

(2) Up till 31st December, 1899, 73 schemes had been approved by the Chief Registrar of Friendly Societies "Labour Gazette" vol. viii. p. 357. Sixty-five of these schemes affect 937,000 workmen. The full particulars are not forthcoming. The practice of "contracting out" is, however, as suggested above, really analogous to insurance. It is probable that in the future less importance will be attached to this element alike by employers and employed. The employer will find it probably more advantageous to insure than to "contract out," and the workmen will probably see that "employers' liability," even if secured in the most rigid manner is not so efficacious in preventing accidents as direct factory legislation and adequate inspection, while probably the attention of both may be directed towards securing as the chief end—certainty of compensation for injury however it may be incurred.

English system, on the other hand, the tendency would appear to be in the direction of throwing the whole of the cost of all accidents upon the employer and of leaving him to pay for insurance if he wishes to do so.

It is difficult to put concisely the considerations from the point of view of economic theory, which bear upon the question how far it is proper for the workman to bear a part of the cost of insuring himself against accidents which may occur to him while he is engaged in his work. Clearly the first question is, do gross wages yield on analysis—net wages plus insurance against the risks incident to the handicraft. Without entering fully into the subject, it may be suggested that the fixation of wages on a "danger scale" is quite hypothetical. The most dangerous employments are not invariably the most highly remunerative. A few cases where highly specialised skill, specially suitable physique and inevitably dangerous conditions, as in deep water diving for example, together yield relatively high earnings, do not prove any rule to the effect that there is in wages, as customarily determined in the labour market, an element of insurance against the risk attaching to particular employments. If there be no such element in wages in general, it is clear that the cost of accidents, by insurance or otherwise must come out of the profits of the employer, out of the price of the product, out of charitable funds or out of taxation. If neither the employer nor the workman bear it, it must be distributed beyond the producing and consuming group in question.

It may however be regarded as possible that gross wages in certain industries do in normal times include some such element as this insurance, although on the slightest pressure the element might be regarded as having a tendency to disappear.

There remains the further question whether or not in those trades in which there may exist this element of accident-cost, in the event of the liability, being fastened upon the employer, wages would be speedily reduced by exactly the amount of it, or perhaps even rather more, since the amount might be indeterminable.

Whatever view one takes of the liability of the employer for those accidents which might be avoided by him, and of the liability of the workman for accidents which result from his own "serious or wilful misconduct," there remains the considerable class of accidents which result from causes beyond the control of either party. For such accidents the workman, according to the traditional view of the Trade Union, was bound to protect himself by insurance.

Under the Workmen's Compensation Act, however, the employer is obliged to compensate even in such cases of accident. Unless, therefore, the whole of the cost of accidents is to be shifted through the employer upon the consumer, it seems on the face of it reasonable that the workman should continue to contribute in some measure towards insurance against accidents that are not preventable by reasonable foresight. The fundamental question really is, ought the cost of accident to be met by the producing group or (as in the German system) by a series of such groups engaged in cognate industries, or ought it to be shifted from shoulder to shoulder until it finally rests upon the shoulders of the consumers. It is clear that the shifting of burdens from shoulder to shoulder, which necessarily occurs in our industrial system, may result in a distribution of burdens rather different from what might be anticipated in a casual view. The consumers would thus pay not merely the cost of the accident risk in addition to the price of the commodity exclusive of it, but would have to pay besides the "loading" occasioned by the shifting. Or, alternatively, ought the cost of industrial accidents to be at once distributed over the whole community by means of a tax. The German system, though probably making ultimately for this latter plan, presently causes the cost of accidents to be a burden upon the industry or group of industries in which they occur, the fortunate employers thus paying for

the less fortunate ones, while in any case the injured workman is guaranteed his compensation when the amount of this has been decided.

The English system makes the employer directly responsible to the workman practically for all accidents, and leaves him to recover from the consumer if he can, while the workman has not merely the bodily risk of accident to take into account, but the risk of losing his compensation amount through the bankruptcy of his employer.

(16) Applicability of the Principles of the Act to Industrial Conditions in Ontario.

On all grounds, so far as any definite conclusion is suggested by the foregoing, it would appear to be wise to wait for some time in order to ascertain more fully what has been the effect of the change of principle in the English Law; and to ascertain also whether further change in the direction of the German legislation or otherwise be not imminent in England. The mere drafting of the English Act has proved to be so defective that some amendments are indispensable.

Although the English and other experience is quite essential to know, the special conditions in Canada must be taken into account. A haphazard adoption of the English system here would probably lead to so much uncertainty and so much litigation that disappointment would inevitably result. It is only fair to face the contingencies fully. It is clear that such legislation means really the redistribution of an already existing charge with perhaps some added cost which may arise in consequence of the redistribution. It would be well, as it seems to me, if it be practicable, to have some calculation made as to the cost in Ontario of such risks as would be involved by the adoption of an Act similar to the English Act of 1897. From the wide difference of risks in different employments and in different places, the equitable rates of compensation and of insurance vary widely. All this would require to be taken into account.

The question must be looked at largely from an actuarial standpoint, and if possible the incidence of the proposed burden should be determined. If it were found on examination that under the existing conditions of industry in Ontario, the adoption of such a measure would involve a burden upon the organizers of labor, which the industries presently carried on here could not bear, the advantage of its adoption does not seem obvious; on the other hand, it might be found that a more equitable distribution of the cost of accident than that which prevails at present would result under an Act similar to the English Act, and that no material disturbance of existing relations would result from its adoption.

That the risk can be insured against does not, from the English experience, seem to effect the question materially. In those industries in which wages form a large part of the cost of production, the pressure of the rate upon the industry might be so considerable as to obliterate the margin by which under conditions of competition it is kept in the Province. Thus, if the rate of insurance against given risks amounts to ½ per cent. upon the wages paid, and the amount of wages paid be $100,000 the premium would be $500. If the capital employed in the industry were $10,000 this would amount to 5 per cent. upon the capital involved. Unless the market admitted of an advance in the price of the goods manufactured while the elements of cost remained the same, or unless the cost of the raw material were reduced, or wages diminished correspondingly, it is clear that as regards that particular industry the inducements to undertake it would be less by 5 per cent. upon the total capital than they were before.

It may be that if an Insurance Company fixed a rate which would be certain to cover the risk the nature of which was not susceptible of precise actuarial determination, it might do no business and the risk would then fall entirely upon the employer, who would have been deprived of the resource which he has at present, viz., to insure against a loss whose incidence is fully known, and

which is not excessive. Given a serious increase in the number of cases in which compensation claims arise, the plain question is, can a rate be fixed which could be paid in average trading years?

On the other hand, it is the case that the industries carried on in Ontario most extensively are not the most dangerous ones—that the number of accidents is not large, partly owing to the conditions of labour, which are on the whole good, and partly owing to factory and other legislation devised for the purpose of preventing accidents. It is possible, therefore, that a rate so low as to form no heavy burden upon industry might be found to be adequate. If it were not found to be adequate, there would be no alternative but the f[illegible]nation of a State Department and the sharing of the liability among the public, the employers, and perhaps also inevitably the workers, either directly, or through the influence, seen or unseen, upon wages, of the adoption of the measure. Measures of this kind cannot be administered without cost.

It is hard for one country to go much in advance of others in legislation. The growth of what is called "social legislation" has been possible in the less influential countries merely because the more influential ones have adopted it previously. No doubt in all countries whose primary need is population there are strong practical grounds for encouraging immigration by precisely such means; by making the country a desirable one for the working man to live in—making it, in short, his interest to live there. Similarly in those countries which, like Germany, have lost heavily by emigration, it is equally expedient to check this emigration by laws having for their object the amelioration of industrial life.

While undoubtedly workingmen are attracted to a country where the conditions of labour are good, where wages are high, factories well appointed and well looked after, hours not excessive and the general conditions of life agreeable, and are repelled from countries where the reverse is the case, it is also true that these conditions are largely the outcome of the competition of capitals seeking employment, and that capital is "easily scared" is when all is said, an important fact. Yet in the long run every improvement of the condition of labour leads by natural growth of the population or by immigration to the increase of the number of labourers and thus to the abundance of labour which enables the capitalist to employ his capital on terms that will yield him a profit. In default of any other system of organization the absence of voluntarily supplied capital in abundance for a country undergoing rapid industrial development must cause serious practical inconvenience.

It is well known that with the facilities for obtaining credit which the Canadian banking system affords, many manufacturing businesses in Canada are conducted by means of an exceedingly narrow margin of business capital. Many so-called employers are really workingmen making in normal years a barely living wage hoping that an extraordinary year may enable them to realize larger gains. This has led to the growth of a great number of small firms doing a manufacturing business and borrowing upon the parts of things as they are made. The tax upon industry which would be involved in an extension of the Compensation Acts would if owing to external competition it could not be shifted upon prices be virtually a tax upon management and labour rather than a tax upon capital. Legislation which would make small concerns more difficult to conduct or which would wipe them out could scarcely be defended on any ground.(1)

If accidents occur which are preventable by means of legislation, humanity

(1) "The Secretary of a Masters' Mutual Insurance Association told me that small employers "in his trade had been simply ruined by compensation cases (brought under the Act of 1880) "successfully carried against them. They work with a very small capital and any little extra burden may break them." W. H. Wolff, "Employers' Liability—What Ought it to be?" London, 1897, p. 23.

would determine that legislation should be passed without delay. But this is not a case of that kind. It is rather a question of the distribution of the cost of accidents which *ex hypothesi* are not preventable. At present the employer bears a part under *The Workmen's Compensation for Injuries Act* (R.S.O. 1897, c. 160); the workman bears a part where contributory negligence on his part diminishes or neutralizes the liability ot the employer, or he bears a part in respect to his payments to friendly societies or labor organizations, who, in turn pay him sick allowances, or in case of death pay his family the amount for which he was insured. The public also bears a part where, as is sometimes the case, the dependants of the injured or dead workman are thrown upon the charity of the public for support. The effect of a Workmen's Compensation Act for Ontario if it were as it is in England, would, no doubt, be in the direction of throwing the whole cost of industrial accidents upon the particular industry—a tax upon management and partly no doubt also upon capital and upon labor. Only in certain cases could it be transferred to the consumers.

If this arrangement were found to be oppressive, as conceivably it might, especially if the system were extended to small concerns, to go back would be found to be impossible, and there would be no alternative but the payment of a portion or even, perhaps, the whole of the compensation out of the public funds, with perhaps an extension of the criminal code to include employers' or workmen's negligence in all cases where accident resulted from this cause.

The circumstance that to a larger extent than is the case in almost any other country, the people of Canada, as farmers, miners, fishermen and the like employ themselves and are not in the position of employees, must render any compensation scheme which depended upon the principle of Employers' Liability alone, effective to a very limited extent.

ADDENDUM.

The statistical results of the first ten years working of the German and Austrian laws are well worked out by Professor A. W. Flux in "Compensation for Industrial Accidents." *Manchester Statistical Society Transactions, 1898, pp. 267-306.*